



The Scottish Parliament  
Pàrlamaid na h-Alba

**JUSTICE COMMITTEE**

**AGENDA**

**10th Meeting, 2017 (Session 5)**

**Tuesday 14 March 2017**

The Committee will meet at 9.45 am in the Mary Fairfax Somerville Room (CR2).

1. **Declaration of interests:** Alexander Stewart will be invited to declare any relevant interests.
2. **Subordinate legislation:** The Committee will take evidence on the Scottish Tribunals (Listed Tribunals) Regulations 2017 [draft] from—

Annabelle Ewing, Minister for Community Safety and Legal Affairs, Hannah Frodsham, Policy Executive, Sandra Wallace, Policy Manager, and John St Clair, Senior Principal Legal Officer, Scottish Government.

3. **Subordinate legislation:** Annabelle Ewing (Minister for Community Safety and Legal Affairs) to move—

S5M-04152—That the Justice Committee recommends that the Scottish Tribunals (Listed Tribunals) Regulations 2017 [draft] be approved.

4. **Subordinate legislation:** The Committee will take evidence on the—

First-tier Tribunal for Scotland Tax Chamber and Upper Tribunal for Scotland (Composition) Regulations 2017 [draft];

Tribunals (Scotland) Act 2014 (Ancillary Provisions) Regulations 2017 [draft];

First-tier Tribunal for Scotland (Transfer of Functions of the First-tier Tax Tribunal for Scotland) Regulations 2017 [draft];

Upper Tribunal for Scotland (Transfer of Functions of the Upper Tax Tribunal for Scotland) Regulations 2017 [draft];

from—

Annabelle Ewing, Minister for Community Safety and Legal Affairs, Hannah Frodsham, Policy Executive, Sandra Wallace, Policy Manager, and John St Clair, Senior Principal Legal Officer, Scottish Government.

5. **Subordinate legislation:** Annabelle Ewing (Minister for Community Safety and Legal Affairs) to move—

S5M-04151—That the Justice Committee recommends that the First-tier Tribunal for Scotland Tax Chamber and Upper Tribunal for Scotland (Composition) Regulations 2017 [draft] be approved.

S5M-04153—That the Justice Committee recommends that the Tribunals (Scotland) Act 2014 (Ancillary Provisions) Regulations 2017 [draft] be approved.

S5M-04336—That the Justice Committee recommends that the First-tier Tribunal for Scotland (Transfer of Functions of the First-tier Tax Tribunal for Scotland) Regulations 2017 [draft] be approved.

S5M-04337—That the Justice Committee recommends that the Upper Tribunal for Scotland (Transfer of Functions of the Upper Tax Tribunal for Scotland) Regulations 2017 [draft] be approved.

6. **Limitation (Childhood Abuse) (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Annabelle Ewing, Minister for Community Safety and Legal Affairs, Elinor Owe, Policy Manager, and Scott Matheson, Senior Principal Legal Officer, Scottish Government.

7. **Railway Policing (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Nigel Goodband, National Chairman, British Transport Police Federation;

Chief Superintendent John McBride, British Transport Police Superintendents' Association Branch;

Michael Hogg, Regional Organiser, National Union of Rail, Maritime and Transport Workers;

Calum Steele, General Secretary, Scottish Police Federation;

Alisdair Burnie, Staff Representative, Transport Salaried Staffs' Association.

Peter McGrath  
Clerk to the Justice Committee  
Room T2.60

The papers for this meeting are as follows—

**Agenda item 2**

Paper by the clerk - Scottish Tribunals (Listed Tribunals) Regulations  
2017 J/S5/17/10/1

Scottish Government Briefing - Scottish Tribunals (Listed Tribunals)  
Regulations 2017 J/S5/17/10/2

**Agenda item 4**

Paper by the clerk - Scottish Tribunals J/S5/17/10/3

Scottish Government Briefing - Scottish Tribunals J/S5/17/10/4

**Agenda item 6**

Paper by the clerk - Limitation (Childhood Abuse) (Scotland)  
Bill J/S5/17/10/5

Private paper - Limitation (Childhood Abuse) (Scotland) Bill J/S5/17/10/6 (P)

[Limitation \(Childhood Abuse\) \(Scotland\) Bill, accompanying documents  
and SPICe briefing](#)

[Written submissions received on the Bill](#)

**Agenda item 7**

Paper by the clerk - Railway Policing (Scotland) Bill J/S5/17/10/7

Private paper - Railway Policing (Scotland) Bill J/S5/17/10/8 (P)

[Railway Policing \(Scotland\) Bill, associated documents and SPICe  
briefing](#)

[Written submission from British Transport Police](#)

[Supplementary written submission from British Transport Police](#)

[Written submission from British Transport Police Superintendents'  
Association](#)

Written submission from Transport Salaried  
Staffs' Association

Supplementary written submission from the Transport Salaried Staffs'  
Association

**Justice Committee**

**10<sup>th</sup> Meeting, 2017 (Session 5), Tuesday 14 March 2017**

**Subordinate legislation**

**Note by the clerk**

**Purpose**

1. This paper invites the Committee to consider the following affirmative instrument:

□ **Scottish Tribunals (Listed Tribunals) Regulations 2017 [draft]**

**SCOTTISH TRIBUNALS (LISTED TRIBUNALS) REGULATIONS 2017 [DRAFT]**

**Introduction**

2. This instrument is made under section 27(2) of the Tribunals (Scotland) Act 2014. The Regulations will remove the Crofting Commission and its functions from the tribunals listed in schedule 1 of the Tribunals (Scotland) Act 2014.

3. Further details on the purpose of the instrument can be found in the policy note (see below).

**Policy Note: Scottish Tribunals (Listed Tribunals) Regulations 2017 [draft]**

**Policy Objectives**

The 2014 Act allows the Scottish Ministers to modify the list of tribunals that will transfer into the Scottish Tribunals in Schedule 1 to the 2014 Act.

These regulations remove the Crofting Commission and its functions from the list of tribunals in Schedule 1 to the 2014 Act. The list of tribunals was taken from a report by the Administrative Justice and Tribunals Council (AJTC) which listed tribunals they considered to be devolved Scottish tribunals. The AJTC was a UK body (with a Scottish Committee) established by the Tribunals Courts and Enforcement Act 2007. The AJTC's remit was defined in statute as having to keep the administrative justice system under review and report on the constitution and working of listed tribunals. The AJTC was abolished in 2013 and the successor body in Scotland did not undertake the supervisory role carried out by them. In addition the Tribunals (Scotland) Act 2014 did not include provisions for a statutory body, such as the AJTC, to have a supervisory role for the Scottish Tribunals.

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**

A targeted consultation with interested parties took place between May and June 2016. There were six responses to the consultation.

## **Impact Assessments**

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. The Equality Impact Assessment is available at the link below:

<http://www.gov.scot/Topics/People/Equality/18507/EqualityImpactAssessmentSearch>

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

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.

## **DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION**

4. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 21 February 2017 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

## **JUSTICE COMMITTEE CONSIDERATION**

5. The Justice Committee is required to report to the Parliament on the instrument by 23 March 2017. The Minister for Community Safety and Legal Affairs has lodged motion S5M-04152 proposing that the Committee recommends approval of the instrument. The Minister is due to attend the meeting on 14 March to answer any questions on the instrument and to move the motion for approval.

6. It is for the Committee to decide whether or not to agree to the motion, and then to report to the Parliament by 23 March 2017. Thereafter, the Parliament will be invited to approve the instrument.

**7. The Committee is asked to delegate to the Convener authority to approve the report on the instrument for publication.**

## **SCOTTISH GOVERNMENT BRIEFING NOTE**

### **REGULATIONS REMOVING THE CROFTING COMMISSION FROM LISTED TRIBUNALS AND TRANSFERRING SCOTTISH TAX TRIBUNALS TO THE SCOTTISH TRIBUNALS STRUCTURE**

The Justice Committee is considering five affirmative regulations at its meeting on 14 March 2017. This briefing note provides the Committee with general background and more detailed information relating to each of the instruments.

#### **Background**

The Tribunals (Scotland) Act 2014 (the “2014 Act”) created a coherent structure for devolved tribunals which had developed in an ad hoc manner over the years. The Act set up two new tribunals – The First-tier Tribunal for Scotland, for initial decisions and the Upper Tribunal for Scotland, primarily for appeals from the First-tier. The tribunals are known collectively as the Scottish Tribunals. The 2014 Act also brings leadership of the tribunals under the remit of the Lord President.

The First-tier is organised into Chambers into which similar subject matter tribunals can be transferred. Once transferred the relevant tribunals are abolished. There is no additional cost in transferring the tribunals as they will transfer with their existing budgets.

Tribunals will transfer in a phased basis over a number of years. The tribunals that are subject to transfer are listed in Schedule 1 of the 2014 Act. The first tribunals covering the housing and property jurisdictions (i.e. the private rented and homeowner housing panels) successfully transferred in December 2016 and are now operating within the new structure. The second jurisdiction covering tax is the subject of the majority of the regulations currently under consideration by the Committee with the exception of the instrument which removes the Crofting Commission from the listed tribunals in Schedule 1 of the 2014 Act.

#### **SSIs BEING CONSIDERED ON 14 MARCH 2017**

##### Scottish Tribunals (Listed Tribunals) Regulations 2017

These regulations remove the Crofting Commission from the listed tribunals in Schedule 1 of the 2014 Act.

Following consultation it was determined that the Crofting Commission did not naturally fit within the Scottish Tribunals structure and was not a tribunal in true sense of the word.

The Crofting Commission is a Non-Departmental Public Body (NDPB) established in April 2012 in accordance with the terms of the Crofting Reform (Scotland) Act 2010. The Commission operates on a day-to-day basis independently of government, but

is an organisation for which Scottish Ministers are ultimately responsible. The Crofting Commission is overseen by a Board which comprises of five Crofting

Commissioners elected from geographic areas in the crofting counties, and three Commissioners appointed by the Scottish Government.

The list of tribunals was taken from a report by the Administrative Justice and Tribunals Council (AJTC), which listed tribunals they considered to be devolved Scottish tribunals. The AJTC was a UK body (with a Scottish Committee) established by the Tribunals, Courts and Enforcement Act 2007. The AJTC's remit was defined in statute as having to keep the administrative justice system under review and report on the constitution and working of listed tribunals. However, it has since been discovered that the Crofting Commission's status as a tribunal was disputed in 2010 during the process of considering the Crofting Reform (Scotland) Bill. At that time Ministers were minded not to remove the Crofting Commission's status as a tribunal so as to keep it within the supervisory remit of the AJTC. The AJTC was abolished in 2013 and the successor body in Scotland did not undertake the supervisory role carried out by them. In addition, the 2014 Act did not include provisions for a statutory body, such as the AJTC, to have a supervisory role for the Scottish Tribunals. In the absence of a supervisory body the status of the Crofting Commission was reconsidered and it was decided to remove the body from the transfer list.

**Scottish Government March 2017**



**Justice Committee**

**10<sup>th</sup> Meeting, 2017 (Session 5), Tuesday 14 March 2017**

**Subordinate legislation**

**Note by the clerk**

**Purpose**

1. This paper invites the Committee to consider the following affirmative instruments:

- **First-tier Tribunal for Scotland Tax Chamber and Upper Tribunal for Scotland (Composition) Regulations 2017 [draft];**
- **Tribunals (Scotland) Act 2014 (Ancillary Provisions) Regulations 2017 [draft];**
- **First-tier Tribunal for Scotland (Transfer of Functions of the First-tier Tax Tribunal for Scotland) Regulations 2017 [draft];**
- **Upper Tribunal for Scotland (Transfer of Functions of the Upper Tax Tribunal for Scotland) Regulations 2017 [draft].**

**FIRST-TIER TRIBUNAL FOR SCOTLAND TAX CHAMBER AND UPPER TRIBUNAL FOR SCOTLAND (COMPOSITION) REGULATIONS 2017 [DRAFT];**

**Introduction**

2. This instrument is made under sections 38(1) and 40(1) of the Tribunals (Scotland) Act 2014. The Regulations make provision as to the composition of the First-tier Tribunal for Scotland when dealing with a case in the Tax Chamber. They also make provision as to the composition of the Upper Tribunal for Scotland when hearing appeals or referrals from the First-tier Tribunal for Scotland Tax Chamber.

3. Further details on the purpose of the instrument can be found in the policy note (see below).

**Policy Note: First-tier Tribunal for Scotland Tax Chamber and Upper Tribunal for Scotland (Composition) Regulations 2017 [draft]**

**Policy Objectives**

The 2014 Act allows the Scottish Ministers to determine the composition of the First-tier Tribunal or Upper Tribunal when convened to decide any matter in a case before it.

These regulations set out the composition of the First-tier Tribunal for Scotland Tax Chamber (First-tier Tribunal) when hearing cases. The policy intent is to replicate the existing composition for cases.

These regulations also set out the composition of the Upper Tribunal for Scotland (Upper Tribunal) hearing appeals or referrals from the First-tier Tribunal. The policy intent is to replicate the existing procedure of cases being heard by a legal member of the Upper Tax Tribunal.

The regulations allow the Chamber President of the First-tier Tribunal Tax Chamber to hear appeals in the Upper Tribunal provided they have had no involvement with the case prior to the appeal. The Lord President and the President of Tribunals being members of the Upper Tribunal may also hear appeals or referrals from the First-tier Tribunal.

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**

A consultation with interested parties took place between 20 October and 4 December 2016. There were 3 responses to this consultation. The responses are available on the Scottish Government website: [https://consult.scotland.gov.uk/tribunals-administrativejustice-policy/tribunals-scotland-act-2014-draft-regulations/consult\\_view](https://consult.scotland.gov.uk/tribunals-administrativejustice-policy/tribunals-scotland-act-2014-draft-regulations/consult_view)

## **Impact Assessments**

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.

The Equality Impact Assessment is available at the link below:

<http://www.gov.scot/Topics/People/Equality/18507/EqualityImpactAssessmentSearch>

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

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.

## **TRIBUNALS (SCOTLAND) ACT 2014 (ANCILLARY PROVISIONS) REGULATIONS 2017 [DRAFT]**

### **Introduction**

4. This instrument is made under sections 80(1) and (2)(a) of the Tribunals (Scotland) Act 2014. The Regulations repeal Part 4 and schedule 2 of the Revenue Scotland and Tax Powers Act 2014 and revoke 4 instruments that relate to the Scottish Tax Tribunals and that were made under those provisions. The Regulations also amend section 249 of that Act to reflect the establishment of the Scottish Tribunals.

5. Further details on the purpose of the instrument can be found in the policy note (see below).

### **Policy Note: Tribunals (Scotland) Act 2014 (Ancillary Provisions) Regulations 2017 [draft]**

#### **Policy Objectives**

The 2014 Act allows the Scottish Ministers to make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary for the purposes of or in connection with the 2014 Act.

These revoke Part 4 and schedule 2 of the Revenue Scotland and Tax Powers Act 2014 which established the Scottish Tax Tribunals and its procedure.

This instrument also revokes four regulations which established the Conduct and Fitness Assessment Tribunals, the Time Limits and Rules of Procedure for both the First-tier and Upper Tax Tribunals, the eligibility for appointment to the Scottish Tax Tribunals and rules concerning voting and offences in proceedings.

The policy intention is that the provisions in the 2014 Act supersede the sections of the Revenue Scotland and Tax Powers Act being revoked.

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**

A consultation with interested parties took place between 20 October and 4 December 2016. There were 3 responses to this consultation. The responses are available on the Scottish Government website: [https://consult.scotland.gov.uk/tribunals-administrativejustice-policy/tribunals-scotland-act-2014-draft-regulations/consult\\_view](https://consult.scotland.gov.uk/tribunals-administrativejustice-policy/tribunals-scotland-act-2014-draft-regulations/consult_view)

#### **Impact Assessments**

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.

The Equality Impact Assessment is available at the link below:

<http://www.gov.scot/Topics/People/Equality/18507/EqualityImpactAssessmentSearch>

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

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.

## **DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION**

6. The Delegated Powers and Law Reform Committee considered these instruments at its meeting on 21 February 2017 and agreed that it did not need to draw them to the attention of the Parliament on any grounds within its remit.

## **JUSTICE COMMITTEE CONSIDERATION**

7. The Justice Committee is required to report to the Parliament on the instruments by 23 March 2017. The Minister for Community Safety and Legal Affairs has lodged motions S5M-04151 and S5M-04153 proposing that the Committee recommends approval of the instruments. The Minister is due to attend the meeting on 14 March to answer any questions on the instruments and to move the motions for approval.

8. It is for the Committee to decide whether or not to agree to the motions, and then to report to the Parliament by 23 March 2017. Thereafter, the Parliament will be invited to approve the instruments.

## **FIRST-TIER TRIBUNAL FOR SCOTLAND (TRANSFER OF FUNCTIONS OF THE FIRST-TIER TAX TRIBUNAL FOR SCOTLAND) REGULATIONS 2017 [DRAFT]**

### **Introduction**

9. This instrument is made under sections 20(2), 28(2) and (6) and 79(1) and paragraph 1(1) of schedule 2 of the Tribunals (Scotland) Act 2014. The Regulations make provision for the transfer into the First-tier Tribunal for Scotland of the functions and members of the First-tier Tax Tribunal for Scotland.

10. Further details on the purpose of the instrument can be found in the policy note (see below).

### **Policy Note: First-tier Tribunal for Scotland (Transfer of Functions of the First-tier Tax Tribunal for Scotland) Regulations 2017 [draft]**

### **Policy Objectives**

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

These regulations transfer into the Scottish Tribunals the existing functions of the First-tier Tax Tribunal for Scotland, in so far as practicable. Upon transfer the First-tier Tax Tribunal for Scotland will be abolished and first decisions will be heard in the First-tier Tribunal for Scotland, Tax Chamber (First-tier Tribunal) with onward appeals to the Upper Tribunal for Scotland (Upper Tribunal).

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 dealing with the case, wherever possible. Unexercised rights of appeal will be to the Upper Tribunal for Scotland, in place of the Upper Tax Tribunal for Scotland. If a party has already exercised its right of appeal to the Upper Tax Tribunal for Scotland prior to the transfer day then the appeal will continue in the Upper Tribunal as if the appeal had been raised, transferred or referred there.

Existing members of the First-tier Tax Tribunal will transfer to the First-tier Tribunal Tax Chamber as long as they meet the relevant eligibility criteria as set out in regulations (SSI 2015/381).

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**

A consultation with interested parties took place between 20 October and 4 December 2016. There were 3 responses to this consultation. The responses are available on the Scottish Government website:

[https://consult.scotland.gov.uk/tribunals-administrative-justice-policy/tribunals\\_scotland-act-2014-draft-regulations/consult\\_view](https://consult.scotland.gov.uk/tribunals-administrative-justice-policy/tribunals_scotland-act-2014-draft-regulations/consult_view)

## **Impact Assessments**

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.

The Equality Impact Assessment is available at the link below:

<http://www.gov.scot/Topics/People/Equality/18507/EqualityImpactAssessmentSearch>

An equality impact assessment was also completed for the Tribunals (Scotland) Bill – see link: <http://www.scotland.gov.uk/Resource/0042/00421637.pdf>

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.

## **UPPER TRIBUNAL FOR SCOTLAND (TRANSFER OF FUNCTIONS OF THE UPPER TAX TRIBUNAL FOR SCOTLAND) REGULATIONS 2017 [DRAFT]**

### **Introduction**

11. This instrument is made under sections 28(2) and (6) and 79(1), and paragraph 1(1) of schedule 2 of the Tribunals (Scotland) Act 2014. The Regulations make provision for the transfer into the Upper Tribunal for Scotland of the functions and members of the Upper Tax Tribunal for Scotland.

12. Further details on the purpose of the instrument can be found in the policy note (see below).

### **Policy Note: Upper Tribunal for Scotland (Transfer of Functions of the Upper Tax Tribunal for Scotland) Regulations 2017 [draft]**

### **Policy Objectives**

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

These regulations transfer into the Scottish Tribunals the existing functions of the Upper Tax Tribunal for Scotland (Upper Tax Tribunal), in so far as practicable. Upon transfer the Upper Tax Tribunal will be abolished and cases will be heard first in the Upper Tribunal for Scotland (Upper Tribunal).

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 Upper Tribunal with the same members hearing the case, wherever possible.

Existing members of the Upper Tax Tribunal will transfer to the Upper Tribunal as long as they meet the relevant eligibility criteria as set out in regulations (SSI 2015/381).

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**

A consultation with interested parties took place between 20 October and 4 December 2016. There were 3 responses to this consultation. The responses are available on the Scottish Government website: [https://consult.scotland.gov.uk/tribunals-administrative-justice-policy/tribunalsscotland-act-2014-draft-regulations/consult\\_view](https://consult.scotland.gov.uk/tribunals-administrative-justice-policy/tribunalsscotland-act-2014-draft-regulations/consult_view)

### **Impact Assessments**

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.

The Equality Impact Assessment is available at the link below:

<http://www.gov.scot/Topics/People/Equality/18507/EqualityImpactAssessmentSe arch>

An equality impact assessment was also completed for the Tribunals (Scotland) Bill – see link: <http://www.scotland.gov.uk/Resource/0042/00421637.pdf>

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.

### **DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION**

13. The Delegated Powers and Law Reform Committee considered these instruments at its meeting on 28 February 2017 and agreed that it did not need to draw them to the attention of the Parliament on any grounds within its remit.

### **JUSTICE COMMITTEE CONSIDERATION**

14. The Justice Committee is required to report to the Parliament on the instruments by 31 March 2017. The Minister for Community Safety and Legal Affairs has lodged motions S5M-04336 and S5M-04337 proposing that the Committee recommends approval of the instruments. The Minister is due to attend the meeting on 14 March to answer any questions on the instruments and to move the motions for approval.

15. It is for the Committee to decide whether or not to agree to the motions, and then to report to the Parliament by 23 March 2017. Thereafter, the Parliament will be invited to approve the instruments.

**16. The Committee is asked to delegate to the Convener authority to approve the report on the instruments for publication.**

## **SCOTTISH GOVERNMENT BRIEFING NOTE**

### **REGULATIONS REMOVING THE CROFTING COMMISSION FROM LISTED TRIBUNALS AND TRANSFERRING SCOTTISH TAX TRIBUNALS TO THE SCOTTISH TRIBUNALS STRUCTURE**

The Justice Committee is considering five affirmative regulations at its meeting on 14 March 2017. This briefing note provides the Committee with general background and more detailed information relating to each of the instruments.

#### **Background**

The Tribunals (Scotland) Act 2014 (the “2014 Act”) created a coherent structure for devolved tribunals which had developed in an ad hoc manner over the years. The Act set up two new tribunals – The First-tier Tribunal for Scotland, for initial decisions and the Upper Tribunal for Scotland, primarily for appeals from the First-tier. The tribunals are known collectively as the Scottish Tribunals. The 2014 Act also brings leadership of the tribunals under the remit of the Lord President.

The First-tier is organised into Chambers into which similar subject matter tribunals can be transferred. Once transferred the relevant tribunals are abolished. There is no additional cost in transferring the tribunals as they will transfer with their existing budgets.

Tribunals will transfer in a phased basis over a number of years. The tribunals that are subject to transfer are listed in Schedule 1 of the 2014 Act. The first tribunals covering the housing and property jurisdictions (i.e. the private rented and homeowner housing panels) successfully transferred in December 2016 and are now operating within the new structure. The second jurisdiction covering tax is the subject of the majority of the regulations currently under consideration by the Committee with the exception of the instrument which removes the Crofting Commission from the listed tribunals in Schedule 1 of the 2014 Act.

#### **SSIs BEING CONSIDERED ON 14 MARCH 2017**

##### Scottish Tribunals (Listed Tribunals) Regulations 2017

These regulations remove the Crofting Commission from the listed tribunals in Schedule 1 of the 2014 Act.

Following consultation it was determined that the Crofting Commission did not naturally fit within the Scottish Tribunals structure and was not a tribunal in true sense of the word.

The Crofting Commission is a Non-Departmental Public Body (NDPB) established in April 2012 in accordance with the terms of the Crofting Reform (Scotland) Act 2010.

The Commission operates on a day-to-day basis independently of government, but is an organisation for which Scottish Ministers are ultimately responsible. The Crofting Commission is overseen by a Board which comprises of five Crofting Commissioners elected from geographic areas in the crofting counties, and three Commissioners appointed by the Scottish Government.

The list of tribunals was taken from a report by the Administrative Justice and Tribunals Council (AJTC), which listed tribunals they considered to be devolved Scottish tribunals. The AJTC was a UK body (with a Scottish Committee) established by the Tribunals, Courts and Enforcement Act 2007. The AJTC's remit was defined in statute as having to keep the administrative justice system under review and report on the constitution and working of listed tribunals. However, it has since been discovered that the Crofting Commission's status as a tribunal was disputed in 2010 during the process of considering the Crofting Reform (Scotland) Bill. At that time Ministers were minded not to remove the Crofting Commission's status as a tribunal so as to keep it within the supervisory remit of the AJTC. The AJTC was abolished in 2013 and the successor body in Scotland did not undertake the supervisory role carried out by them. In addition, the 2014 Act did not include provisions for a statutory body, such as the AJTC, to have a supervisory role for the Scottish Tribunals. In the absence of a supervisory body the status of the Crofting Commission was reconsidered and it was decided to remove the body from the transfer list.

Upper Tribunal for Scotland (Transfer of Functions of the Upper Tax Tribunal for Scotland) Regulations 2017; and

First-tier Tribunal for Scotland (Transfer of Functions of the First-tier Tax Tribunal for Scotland) Regulations 2017

These two regulations transfer the functions and members of the First-tier and Upper Tax Tribunal (known collectively as the Scottish Tax Tribunals) to the Scottish Tribunals. The Tribunals (Scotland) Act 2014 ("the 2014 Act") stipulates that any tribunal listed in Schedule 1 of the 2014 Act must be transferred in a separate instrument. The First-tier and Upper Tax Tribunals are listed separately in Schedule 1 of the Act. Once functions and members are transferred, the Scottish Tax Tribunals will be abolished.

It is proposed that all members of the Scottish Tax Tribunals will transfer into the Scottish Tribunals with legal and ordinary members of the First-tier Tax Tribunal transferring in as legal and ordinary members of the First-tier Tribunal and legal members of the Upper Tax Tribunal transferring in as legal members of the Upper Tribunal.

Tribunals (Scotland) Act 2014 (Ancillary Provisions) Regulations 2017

These regulations repeal part 4 and schedule 2 of the Revenue Scotland and Tax Powers Act 2014 and related secondary legislation. Part 4 and schedule 2 of the

Revenue Scotland and Tax Powers Act established the Scottish Tax Tribunals and its procedure. The secondary legislation established the Conduct and Fitness Assessment Tribunals, Time Limits and Rules of Procedure for both the First-tier and Upper Tax Tribunals, eligibility for appointment to the Scottish Tax Tribunals and rules concerning voting and offences in proceedings.

The equivalent provisions in the 2014 Act will replace the provisions in the Revenue Scotland and Tax Powers Act. The eligibility criteria are already set out in SSI 2015/381. The First-tier Tax Tribunal Rules of Procedure will be replaced by the First-tier Tax Chamber Rules of Procedure (negative instrument) which was laid on 10 March 2017. The Upper Tax Tribunal Rules of Procedure will be replaced by the Upper Tribunal Rules of Procedure which came into force in December 2016.

First-tier Tribunal for Scotland Tax Chamber and Upper Tribunal for Scotland (Composition) Regulations 2017

These regulations set out the type of member who may hear a case in the First-tier Tribunal Tax Chamber. They aim to replicate what currently happens in the First-tier Tax Tribunal. Cases may be heard by a legal member on their own, a legal member with one ordinary member or a legal member with two or more members (either legal or ordinary).

These regulations also set out the composition of the Upper Tribunal when hearing appeals from the Tax Chamber. Again the regulations maintain the current position in that appeals will be heard for the most part by a legal or judicial member of the Upper Tribunal (in this case a Court of Session judge). The regulations also allow the Chamber President of the First-tier Tax Chamber (as long as they have not been involved in the case in the first instance), the Lord President and the President of Tribunals (if appropriate) to hear appeals in the Upper Tribunal.

**Scottish Government March 2017**

**Justice Committee**

**10<sup>th</sup> Meeting, 2017 (Session 5), Tuesday 14 March 2017**

**Limitation (Childhood Abuse) (Scotland) Bill**

**Note by the clerk**

**Justice Committee**

**10<sup>th</sup> Meeting, 2017 (Session 5), Tuesday 14 March 2017**

**Limitation (Childhood Abuse) (Scotland) Bill**

**Note by the clerk**

**Introduction**

1. The Limitation (Childhood Abuse) (Scotland) Bill was introduced in the Scottish Parliament on 16 November 2016. The Parliamentary Bureau designated the Justice Committee as lead committee for Stage 1 scrutiny on 22 November 2016.
2. The Committee issued a [call for evidence](#), with a closing date of 11 January 2017. All written responses accepted as evidence (which includes responses from most of the organisations giving evidence at this meeting) can be found on the Committee's [website](#).
3. The Finance and Constitution Committee published a [call for evidence](#) on the estimated financial implications of the Bill as set out its accompanying [Financial Memorandum](#), with a closing date of 20 January 2017. Five responses were received, which can be accessed [here](#). The Finance and Constitution Committee agreed it will give no further consideration to the Financial Memorandum for the Bill.

**Committee consideration**

4. On 31 January 2017 committee members held private meetings with survivors of childhood abuse.
5. The Committee had its first formal evidence session on the Bill on 21 February 2017. The Committee first heard from the Association of Personal Injury Lawyers, Victims Support Scotland, Rape Crisis Scotland, and two survivors representing Former Boys and Girls Abused in Quarriers Homes. It then heard from the Association of British Insurers and the Forum of Insurance Lawyers. The Official Report of that meeting can be accessed [here](#).

6. On 28 February 2017 the Committee took evidence from two further panels. The first panel comprised the Law Society of Scotland, the Faculty of Advocates and the Scottish Human Rights Commission. The Committee then heard from the Convention of Scottish Local Authorities (COSLA), Police Scotland, Social Work Scotland and the Society of Local Authority Lawyers and Administrators in Scotland (SOLAR). The Official Report of that meeting can be accessed [here](#).
7. At its meeting on 14 March 2017, the Committee will take evidence from the Minister for Community Safety and Legal Affairs, Annabelle Ewing.

**Justice Committee**

**10<sup>th</sup> Meeting, 2017 (Session 5), Tuesday 14 March 2017**

**Railway Policing (Scotland) Bill**

**Note by the clerk Introduction**

1. The Railway Policing (Scotland) Bill<sup>1</sup> was introduced in the Scottish Parliament on 8 December 2016. The Parliamentary Bureau designated the Justice Committee as lead committee for Stage 1 scrutiny, on 13 December 2016.
2. The Committee agreed its approach to scrutiny of the Bill at Stage 1 on Tuesday 21 December 2016, and published a call for evidence.
3. The Committee received 45 responses to the call for evidence and two supplementary submissions. They are published on the Committee's [website](#).
4. On 7 February 2017 the Committee considered evidence received and agreed a timetable and witnesses for oral evidence taking. On 28 February the Committee further considered and agreed witnesses to invite to provide oral evidence on the Bill at Stage 1.

**Committee consideration**

5. At its meeting on 7 March 2017 the Committee took evidence the British Transport Police, the British Transport Police Authority (BTPA), the Scottish Police Authority and Police Scotland.
6. At its 14 March meeting the Committee will take evidence from relevant unions and staff associations. This comprises of the British Transport Police Federation, the British Transport Police Superintendents' Association Branch, the National Union of Rail, Maritime and Transport Workers, the Scottish Police Federation, and the Transport Salaried Staffs' Association.

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<sup>1</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/102502.aspx>

