

Draft Regulations laid before the Scottish Parliament under section 80(2)(a) of the Tribunals (Scotland) Act 2014, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.

TRIBUNALS AND INQUIRIES

**The First-tier Tribunal for Scotland Housing and Property
Chamber (Incidental Provisions) Regulations 2019**

Made - - - - 2019
Coming into force - - 6th March 2019

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 80(1) of the Tribunals (Scotland) Act 2014⁽¹⁾ and all other powers enabling them to do so. In accordance with section 80(2)(a) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 and come into force on 6 March 2019.

Amendment of the Debtors (Scotland) Act 1987

2.—(1) The Debtors (Scotland) Act 1987⁽²⁾ is amended in accordance with paragraphs (2) to (12).

(2) In section 1 (time to pay directions)—

(a) in subsections (1), (3) and (5) after “court”, on each occasion where it appears, insert “or the First-tier Tribunal”,

(b) in subsection (4)—

(i) after “a court” insert “or the First-tier Tribunal”, and

(ii) after “auditor of court” insert “or auditor of the Court of Session”, and

(c) in subsection (7) after “Act of Sederunt” insert “or the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017”.

(3) In section 2 (effect of time to pay direction on diligence)—

(1) 2014 asp 10.
(2) 1987 c.18.

- (a) in subsections (3) and (4) after “court”, on each occasion where it appears, insert “or the First-tier Tribunal”,
 - (b) in subsection (5A) for “or sheriff clerk” substitute “, sheriff clerk or, in relation to time to pay directions made by the First-tier Tribunal, a member of administration staff of the First-tier Tribunal”.
- (4) In section 3 (variation and recall of time to pay direction and arrestment)—
- (a) in subsection (1) after “decree” insert “, or the First-tier Tribunal, where it has made an order.”,
 - (b) in subsection (2) after “court”, on each occasion where it appears, insert “or the First-tier Tribunal”, and
 - (c) in subsection (3) for “or sheriff clerk” substitute “, sheriff clerk or, in relation to time to pay directions made by the First-tier Tribunal, a member of administration staff of the First-tier Tribunal”.
- (5) In section 5 (time to pay orders)—
- (a) in subsection (2)—
 - (i) after “below, the sheriff” insert “or the First-tier Tribunal”, and
 - (ii) omit “by the sheriff clerk”,
 - (b) in subsections (4), (5) and (5A) after “the sheriff”, on each occasion where it appears, insert “or the First-tier Tribunal”, and
 - (c) in subsection (7) after “Act of Sederunt” insert “or by rules made under section 68 or paragraph 4 of schedule 9 of the Tribunals (Scotland) Act 2014”.
- (6) In section 6 (application for time to pay order)—
- (a) in subsection (2)—
 - (i) omit “sheriff clerk’s”, and
 - (ii) after “of this Act” insert “on the sheriff clerk or, in relation to time to pay directions made by the First-tier Tribunal, a member of administration staff of the First-tier Tribunal”,
 - (b) in subsection (3) omit “to him”,
 - (c) in subsections (3) to (5) after “the sheriff”, on each occasion where it appears, insert “or the First-tier Tribunal”,
 - (d) in subsection (4) after “Act of Sederunt” insert “or rules made under section 68 or paragraph 4 of schedule 9 of the Tribunals (Scotland) Act 2014”,
 - (e) in subsection (6)—
 - (i) after “where the sheriff” insert “or the First-tier Tribunal”, and
 - (ii) after “sheriff clerk” insert “or, in relation to time to pay directions made by the First-tier Tribunal, a member of administration staff of the First-tier Tribunal”.
- (7) In section 7 (disposal of application)—
- (a) in subsections (1) to (3) after “the sheriff”, on each occasion where it appears, insert “or the First-tier Tribunal”,
 - (b) in subsection (4)—
 - (i) after “sheriff clerk” insert “or, in relation to time to pay directions made by the First-tier Tribunal, a member of administration staff of the First-tier Tribunal”, and
 - (ii) in paragraphs (a) and (b) after “the sheriff”, on each occasion where it appears, insert “or the First-tier Tribunal”.

(8) In section 8(2) (effect of interim order on diligence) after “sheriff’s” insert “or the First-tier Tribunal’s”.

(9) In section 9 (effect of time to pay order on diligence)—

(a) after subsection (2) insert—

“(2A) On making a time to pay order, the First-tier Tribunal in respect of the debt—

(a) must make an order recalling any existing earnings arrestment,

(b) where the debt is being enforced by a conjoined arrestment order, must—

(i) if the First-tier Tribunal Housing and Property Chamber made the conjoined arrestment order, vary it so as to exclude the debt or, where no other debt or maintenance is being enforced by the order, recall the order,

(ii) if either—

(aa) another Chamber of the First-tier Tribunal, or

(bb) a sheriff sitting in the sheriff court,

made the conjoined arrestment order, require intimation of the time to pay order to be made to the other Chamber or to the sheriff who must so vary or, as the case may be, recall the conjoined arrestment order,

(c) where a notice of land attachment has been registered under section 83(1)(c) of the 2007 Act, must make an order prohibiting the taking of any steps other than—

(i) the serving, under subsection (5) of that section, of a copy of the notice, and

(ii) the registration, under subsection (6) of that section, of a certificate of service,

(d) where a residual attachment order has been made under section 132(2) of the 2007 Act, must make an order prohibiting the taking of any steps other than the serving, under section 133(1) of the 2007 Act, of a schedule of residual attachment,

(e) may make an order recalling an interim attachment,

(f) may make an order recalling an attachment,

(g) may make an order recalling or restricting any arrestment other than an arrestment of the debtor’s earnings in the hands of the debtor’s employer.”

(b) in subsections (3) and (6) after “the sheriff”, on each occasion where it appears, insert “or the First-tier Tribunal”,

(c) in subsection (4)—

(i) after “the sheriff” insert “or the First-tier Tribunal”,

(ii) omit “on him”, and

(iii) for “he “ substitute “the sheriff or the First-tier Tribunal”,

(d) in subsection (4A)—

(i) after “the sheriff” insert “or the First-tier Tribunal”,

(ii) omit “on him”, and

(iii) for “he “ substitute “the sheriff or that tribunal”,

(e) in subsection (7)—

- (i) after “sheriff clerk” insert “or, in relation to time to pay directions made by the First-tier Tribunal, a member of administration staff of the First-tier Tribunal”, and
 - (ii) for “he makes intimation” substitute “intimation is made”.
- (10) In section 10 (variation and recall of time to pay order and arrestment)—
- (a) in subsections (1), (2) and (4) after “the sheriff”, on each occasion where it appears, insert “or the First-tier Tribunal”,
 - (b) in subsection (1)(a) for “he” substitute “the sheriff or the Tribunal”, and
 - (c) in subsection (3) after “sheriff clerk” insert “or, in relation to time to pay directions made by the First-tier Tribunal, a member of administration staff of the First-tier Tribunal”.
- (11) In section 15 (interpretation of Part 1)—
- (a) in subsection (1)—
 - (i) before the definition of “adjudication for debt” insert—
 - ““2007 Act” means the Bankruptcy and Diligence etc. (Scotland) Act 2007(3),” and
 - (ii) after the definition of “adjudication for debt” insert—
 - ““the First-tier Tribunal” means the First-tier Tribunal for Scotland Housing and Property Chamber.”,
 - (b) in subsection (2) after the definition of “the debt concerned” insert—
 - ““decree”, where the context requires or permits, includes an order made by the First-tier Tribunal.”.
- (12) In section 96(2) (provisions to assist debtor in proceedings under the Act)—
- (a) after “sheriff clerk”, on each occasion where it appears, insert “or a member of administration staff of the First-tier Tribunal for Scotland (in relation to time to pay directions made by it)”, and
 - (b) for “by him in performing the duties imposed on him” substitute “when performing the duties imposed”.

Amendment of the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988

3.—(1) The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988(4) are amended in accordance with paragraph (2).

(2) In paragraph 1 of the schedule for “court” substitute “the First-tier Tribunal for Scotland Housing and Property Chamber”.

Amendment of the Housing (Scotland) Act 1988

4.—(1) The Housing (Scotland) Act 1988(5) is amended in accordance with paragraph (2).

(2) In Part 1 of schedule 5, in ground 8 (grounds for possession of houses let on assured tenancies) after “hearing” insert “or the date of the case management discussion, whichever is the earlier”.

(3) 2007 asp 3.

(4) S.I. 1988/2067 (S. 197).

(5) 1988 c.43.

Amendment of the Removing from Heritable Property (Form of Charge) (Scotland) Regulations 2011

5.—(1) The Removing from Heritable Property (Form of Charge) (Scotland) Regulations 2011(6) are amended in accordance with paragraph (2).

(2) In the schedule—

- (a) after “decree”, on each occasion where it appears, insert “or order”,
- (b) after “sheriff court” insert “/First-tier Tribunal for Scotland Housing and Property Chamber”,
- (c) after “the sheriff”, in both places where it appears, insert “or First-tier Tribunal”, and
- (d) after “the court” insert “or First-tier Tribunal”.

Amendment of the Bankruptcy and Diligence etc. (Scotland) Act 2007

6.—(1) The Bankruptcy and Diligence etc. (Scotland) Act 2007(7) is amended in accordance with paragraphs (2) to (6).

(2) In section 214 (expressions used in this Part)—

(a) in subsection (1)—

- (i) in the definition of “a decree for removing from heritable property”, in paragraph (a) after “decree” insert “, order”,
- (ii) in the definition of “an action for removing from heritable property” after “decree”, in both places where it appears, insert “, order”, and
- (iii) after the definition of “defender” insert—

““the First-tier Tribunal” means the First-tier Tribunal for Scotland,”, and

(b) in subsection (2) after “decrees”, in both places where it appears, insert “, orders”.

(3) In section 215 (procedure for execution of removing)—

- (a) after “Act of Sederunt” insert “or by rules made under section 68 or paragraph 4 of schedule 9 of the Tribunals (Scotland) Act 2014”, and
- (b) after “such Act” insert “or rules”.

(4) In section 216(4) (service of charge before removing)—

- (a) after “decree” insert “or order”, and
- (b) after “court”, in both places where it appears, insert “or the First-tier Tribunal”.

(5) In section 217 (when removing not competent)—

- (a) in subsection (1) after “Act of Sederunt” insert “or by rules made under section 68 or paragraph 4 of schedule 9 of the Tribunals (Scotland) Act 2014”, and
- (b) in subsection (2) insert after “situated” insert “, or from the First-tier Tribunal,”.

(6) In section 218 (preservation of property left in premises), after “court”, on each occasion where it appears, insert “or the First-tier Tribunal”.

(6) S.S.I. 2011/158.

(7) 2007 asp 3.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument:
The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 No. 51

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend certain primary and subordinate legislation to make provisions incidental to provision made by the Tribunals (Scotland) Act 2014 in relation to the operation of the First-tier Tribunal for Scotland Housing and Property Chamber (“the Tribunal”).

Regulation 2 amends—

- the Debtors (Scotland) Act 1987 to permit the Tribunal to make time to pay directions, which previously were made only by the sheriff,
- the Assured Tenancies (Notice to Quit Prescribed Information) (Scotland) Regulations 1988 to make reference to the Tribunal instead of the sheriff,
- the Housing (Scotland) Act 1988 to refer to case management discussions as well as hearings,
- the Removing from Heritable Property (Form of Charge) (Scotland) Regulations 2011 so that those Regulations apply to enforcement in relation to the Tribunal as well as in relation to the sheriff court, and
- the Bankruptcy and Diligence etc. (Scotland) Act 2007 so that the provisions apply to enforcement in relation to the Tribunal as well as in relation to the sheriff court.

No business and regulatory impact assessment has been prepared for these Regulations as no impact on businesses, charities or voluntary bodies is foreseen.