

POLICY NOTE

THE FIRST-TIER TRIBUNAL FOR SCOTLAND HOUSING AND PROPERTY CHAMBER (PROCEDURE) AMENDMENT REGULATIONS 2018

SSI 2018/378

1. The above instrument is made in exercise of the powers conferred by paragraphs 4(2) and 5 of schedule 9 of the Tribunals (Scotland) Act 2014 (the 2014 Act). This instrument is subject to the negative procedure.
2. This is a technical instrument to clarify procedures in the Housing and Property Chamber of the First-tier Tribunal for Scotland and to ensure the Chamber can operate efficiently and effectively as originally intended.
3. This instrument is related to The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 SSI 2019/XXX for amendment in regulation 2(17).

Policy Objectives

4. The 2014 Act allows rules to be made to regulate the practice and procedure of both the First-tier and Upper Tribunals. Paragraph 4(2) of Schedule 9 to the 2014 Act allows rules to be made by the Scottish Ministers until such time as responsibility for making Tribunal rules passes to the Scottish Civil Justice Council.
5. On 1 December 2017 most private rented sector civil cases transferred from the sheriff court to the First-tier Tribunal for Scotland Housing and Property Chamber. The Tribunal enables a less adversarial approach with greater accessibility for tenants, and landlords
6. The First-tier Tribunal makes orders equivalent to decrees previously made by the sheriff courts. For example, sheriffs can make orders to evict tenants and the Tribunal can now do the same. The basis for raising a case and the matters to be taken into account also remain the same.
7. A number of issues have come to light since the transfer of jurisdiction from the sheriff court. The First-tier Tribunal submitted a list of proposed amendments mainly to provide clarity to members as it handles the new case load.
8. These regulations address the following issues identified through the operation of new practice arrangements:-

Regulation 2

Paragraphs 8, 12, 18, 19, 20, 21, 22, 24, 25, 26, 27 and 28 relate to minor drafting and corrections. There is no real effect on policy.

Paragraph 2(3) amends rule 1 to define the Bankruptcy and Diligence etc. (Scotland) Act 2007 and the charge and order for removing which provide clarity for certain

actions for removing from heritable property, including the requirements for notice, service and inventory.

Paragraph (4) provides for the requirements for making an application where the address of a party is not known, for example, where a tenant may have abandoned the property and the applicant does not know the tenant's whereabouts and cannot give the required prior notice to the tenant of intention to evict or raise proceedings in the Tribunal. Instead, the applicant may request service by advertisement on the website of the First-tier Tribunal for Scotland. Provision for service by advertisement is set out under paragraph (7) which is similar to the former sheriff court procedure.

Paragraph (5) sets out the time limits for appeals from any decision where there is no other time limit set in statute. This provides continuity for the transfer of jurisdiction from the sheriff court where rule 2.6 of the Summary Applications formerly set the time limit of 21 days where no explicit time limit is stated elsewhere. Some local authority decisions may fall into this category, for example, where a local authority refuses to enter a landlord on its register and the landlord wishes to appeal the decision.

Paragraph (6) enables any formal service to be served on the occupier where there is an application for eviction or possession and the name of the tenant is unknown, for example, where the applicant is a lender which has served a calling up notice.

Paragraph (9) sets out the procedure and notification period for parties to apply for consideration of an amendment to an application in progress that does not introduce a new issue. For example, where rent may increase during the progress of an application, this may alter the sum being claimed by the applicant for rent arrears.

Paragraph (10) enables the Tribunal to specify a lead case where there are 2 or more cases and to pause the progress of these related cases. This may occur, for example, where there are common issues for property factors. In certain circumstances, it is more efficient for the Tribunal to determine one lead case where its decision is likely to impact other similar cases.

Paragraph (11) enables the Tribunal to inform the Registry Trust about decisions relating to evictions or payment similar to the former practice in the sheriff court. It also makes clear that the Tribunal may inform relevant authorities where they find that a landlord, letting agent or property factor is not registered.

Paragraphs 13 and 14 make clear that appeals under section 92 (appeal against refusal to register or removal from register) of the 2004 Act are not subject to the tribunal appeal and review procedure. The application procedure is set out in rule 99 and the procedure and associated appeal rights for this local authority decision are established in section 92 of Antisocial Behaviour etc. (Scotland) Act 2004.

Paragraph (15) makes clear that an order cannot be enforced until the expiry of appeal periods prescribed for the Upper Tribunal.

Paragraph (16) provides continuity on the transfer of jurisdiction from the sheriff court in relation to actions for removing and enables interest to be included on payment orders.

Paragraph 17 also provides continuity on transfer of jurisdiction, as above. The procedures are enabled by the Debtors (Scotland) Act 1987 as amended by the First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 SSI 2019/XXX.

Paragraph (23) provides for an application to modify a tenant's right to shared accommodation which transferred from the sheriff court but for which procedure was omitted in error from the Rules.

Consultation

9. In accordance with paragraph 4(3) of schedule 9 of the 2014 Act, the President of Tribunals has been consulted on these regulations.

Impact Assessments

10. Section 149 of the Equality Act 2010 provides for the public sector equality duty. These rules provide for the operation of judicial functions which are exempt from the public sector equality duty. The Scottish Courts and Tribunal Service are independently responsible for equality in terms of administration and operational matters in relation to the First-tier Tribunal.

11. 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
December 2018