

Draft Regulations laid before the Scottish Parliament under section 79(2)(a) and (b) and section 80(2)(a) of the Tribunals (Scotland) Act 2014, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2016 No.

TRIBUNALS AND INQUIRIES

The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Panel) Regulations 2016

Made - - - - 2016

Coming into force - - 1st December 2016

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 20(2), 28(2), 79(1) and 80(1) and paragraph 1(1) of schedule 2 of the Tribunals (Scotland) Act 2014⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 11(1)(a) and (b) of that Act, the Scottish Ministers have obtained the Lord President's approval and have consulted such other persons as they considered appropriate.

In accordance with section 79(2)(a) and (b) and 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.—(1) These Regulations may be cited as the First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Panel) Regulations 2016.

(2) These Regulations come into force on 1st December 2016.

Interpretation

2. In these Regulations—

“the 2014 Act” means the Tribunals (Scotland) Act 2014;

“the hohp” means the panel constituted under schedule 4 of the Rent (Scotland) Act 1984⁽²⁾, to be known as the homeowner housing panel in terms of section 16(2) of the Property Factors (Scotland) Act 2011⁽³⁾ when exercising functions conferred on it by virtue of section 16(1) of that Act; and

(1) 2014 asp 10.

(2) 1984 c.58.

(3) 2011 asp 8.

the “hohp functions” means the functions exercised by the hohp (including those of the president of the panel and the members of the panel, but not the vice president of the panel) by virtue of section 16(1) of the Property Factors (Scotland) Act 2011.

Transfer of hohp functions to the First-tier Tribunal and abolition of hohp

3.—(1) Subject to regulations 5 and 6, the hohp functions are transferred to the First-tier Tribunal with allocation to the First-tier Tribunal Housing and Property Chamber.

(2) The hohp is abolished.

Transfer of hohp members to the First-tier Tribunal

4.—(1) Subject to paragraphs (2) and (3), members of the hohp under the age of 75 on the coming into force of these Regulations are transferred to and become members of the First-tier Tribunal, with legal members of the hohp becoming legal members of the First-tier Tribunal, and other members of the hohp (including the vice-president) becoming ordinary members of the First-tier Tribunal.

(2) Members of the hohp transferred to the First-tier Tribunal under paragraph (1) shall (subject to the provisions of the 2014 Act) be members of the First-tier Tribunal in accordance with terms and conditions to be offered by the Scottish Ministers on transfer, which will supersede any existing terms and conditions of appointment.

(3) A member of the hohp who is aged 70 or over on the coming into force of these Regulations shall transfer only if the Scottish Ministers in consultation with the President of Tribunals consider it desirable in the public interest that the member should transfer.

Transitional and savings provisions

5. Schedule 1 of these Regulations contains transitional and savings provisions.

Consequential amendments and repeals

6. The consequential amendments and repeals set out in schedule 2 of these Regulations have effect.

Consequential amendments to the Property Factors (Scotland) Act 2011 Code of Conduct of Property Factors

7. The consequential amendments to the Property Factors (Scotland) Act 2011 Code of Conduct of Property Factors set out in schedule 3 of these Regulations have effect.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

SCHEDULE 1

Regulation 5

Transitional and savings provisions

Applications to and proceedings in progress before the hohp on 1st December 2016 to transfer to the First-tier Tribunal

1. Any applications to the hohp already in progress on 1st December 2016 but not yet determined and any proceedings already in progress before that date shall be transferred to and be completed by the First-tier Tribunal but with so far as possible the same persons hearing and determining the case before the First-tier Tribunal as members of that tribunal as were prior to 1st December 2016 hearing the case as members of the hohp.

Decisions, directions and orders of the hohp to continue in force

2. Any decision (whether or not called a decision), direction or order given or made in applications to or proceedings before the hohp which is in force immediately before 1st December 2016 remains in force on and after that date as if it were a decision, direction or order of the First-tier Tribunal.

Time limits in respect of applications to and proceedings before the hohp to carry over to the First-tier Tribunal

3. Any time limit which has started to run before 1st December 2016 in respect of applications to and proceedings before the hohp (and which has not expired) shall continue to apply where applications and proceedings are transferred to the First-tier Tribunal.

Unexercised right of appeal to sheriff, if exercised, to be appeal to the Upper Tribunal

4. Where in respect of a decision of the President of the hohp or by a person exercising delegated powers of the President before 1st December 2016, there lies a right of appeal to the sheriff, which has not been exercised before that date but is still exercisable, any appeal on or after 1st December 2016 shall be to the Upper Tribunal for Scotland as if the decision had been made by the First-tier Tribunal and the appeal shall be an appeal from the First-tier Tribunal for the purposes of section 46(1) of the 2014 Act.

Savings provision

5. Where in respect of a decision of the President of the hohp or by a person exercising delegated powers of the President before 1st December 2016 there lies a right of appeal to the sheriff which has been exercised before that date, the appeal to the sheriff is not affected by these Regulations or the First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016(4).

SCHEDULE 2

Regulation 6

Consequential amendments and repeals of the Property Factors (Scotland) Act 2011

1. The Property Factors (Scotland) Act 2011 is amended in accordance with paragraphs 2 to 9.

(4) S.S.I. 2016/ .

Draft Legislation: This is a draft item of legislation and has not yet been made as a Scottish Statutory Instrument. This draft has been replaced by a new draft, *The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Panel) Regulations 2016* ISBN 978-0-11-103270-1

2. In section 17 (application to homeowner housing panel), in subsection (1), for “homeowner housing panel” substitute “First-tier Tribunal”.

3. The title to section 17 becomes “Application to the First-tier Tribunal”.

4. In section 18 (referral to homeowner housing committee)—

- (a) in subsection (1), for “president of the homeowner housing panel” substitute “Chamber President”;
- (b) in subsections (2), (3) and (4) for “president” in each place that it occurs substitute “Chamber President”;
- (c) in subsection (3)(a), for “panel’s” substitute “First-tier Tribunal’s”; and
- (d) after subsection (5) insert—

“(6) In this Act, “Chamber President” means Chamber President of the First-tier Tribunal for Scotland Housing and Property Chamber.”

5. After section 18, insert—

“18A. Delegation of Chamber President’s powers

(1) The Chamber President may delegate the Chamber President’s functions under section 18 to any legal or ordinary member of the First-tier Tribunal.

(2) A delegation under this section does not affect the Chamber President’s—

- (a) responsibility for the carrying out of delegated functions, or
- (b) ability to carry out delegated functions.”.

6. In section 28 (delegation of functions), in subsection (3), the words “26(1), 27(3),” are repealed.

7. In section 30 (orders and regulations), in subsection (3), the words “or regulations under section 26(1)” are repealed.

8. In section 31 (interpretation) after the entry for “applicant” insert—

““Chamber President” has the meaning given by section 18(6),”

9. Sections 16 (and the italic heading preceding it), 22, 25, 26 and 27 are repealed.

SCHEDULE 3

Regulation 7

Consequential amendments to the Property Factors (Scotland) Act 2011 Code of Conduct of Property Factors

1. The Property Factors (Scotland) Act 2011 Code of Conduct of Property Factors, made under section 14(1) of the Property Factors (Scotland) Act 2011, laid before the Scottish Parliament on 30th April 2012 and brought into force on 1st October 2012 by the Property Factors (Code of Conduct) (Scotland) Order 2012⁽⁵⁾, is amended as follows.

2. In the introduction, for “homeowner housing panel” in each place it occurs substitute “First-tier Tribunal for Scotland Housing and Property Chamber”.

3. In section 1—

(5) [S.S.I. 2012/217](#).

- (a) for “homeowner housing panel” in each place it occurs substitute “First-tier Tribunal for Scotland Housing and Property Chamber”; and
 - (b) for “Panel” substitute “First-tier Tribunal for Scotland Housing and Property Chamber”.
4. In section 4.2, for “homeowner housing panel” substitute “First-tier Tribunal for Scotland Housing and Property Chamber.
5. In section 7, for “homeowner housing panel” in each place it occurs substitute “First-tier Tribunal for Scotland Housing and Property Chamber”.
6. In Annex A, for “homeowner housing panel” substitute “First-tier Tribunal for Scotland Housing and Property Chamber”.
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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the transfer into the First-tier Tribunal for Scotland of the functions and members of the Homeowner Housing Panel. The First-tier Tribunal was set up by section 1 of the Tribunals (Scotland) Act 2014. It is divided into chambers, with the chambers hearing cases according to the subject-matter of the case. The First-tier Tribunal Housing and Property Chamber hears cases previously dealt with by the Homeowner Housing Panel.

These Regulations also make consequential amendments to the Property Factors (Scotland) Act 2011, largely substituting references to the Homeowner Housing Panel with references to the First-tier Tribunal, with similar substituted references made to the Code of Conduct of Property Factors. Transitional provisions are made to manage the transfer of on-going casework. When this instrument comes into force on 1st December 2016, all applications to the Homeowner Housing Panel not yet determined transfer to the First-tier Tribunal, including applications not yet accepted as validly made.