

POLICY NOTE

THE LEGAL AID (SCOTLAND) ACT 1986 AMENDMENT REGULATIONS 2017

SSI 2017/xxx

The Scottish Ministers propose to make the regulations above in exercise of the powers conferred by sections 13(4) and all other powers enabling them to do so.

Policy Objectives

The policy objective of this instrument is to ensure civil legal aid continues to be available for civil cases relating to the private rented sector before the First-tier Tribunal for Scotland Housing and Property Chamber, as it was available for those cases before the sheriff. This is with the exception of landlord registration, this is because landlords should be treated in the same way as property factors and letting agents in relation to registration matters. There is currently no publicly funded legal assistance available in the Housing & Property Chamber for Property Factor registration matters and we propose that letting agents should be treated the same. We can assume most landlords will have at least one property that is not their main dwelling, and regard will be given to any associated income for financial assessment. This will put them out of scope for Advice & Assistance and often for civil legal aid too. Many landlords will have insurance, and therefore will have other rights and facilities, to which regard must be had before looking to the Fund to cover the cost of legal proceedings. Legal aid is also to be made available for the new private tenancy created by the Private Housing (Tenancies) (Scotland) Act 2016.

This amendment is necessary as section 16 of the Housing (Scotland) Act 2014 transfers jurisdiction in civil matters relating to the private rented sector from the sheriff to the First-tier Tribunal of Scotland Housing and Property Chamber. These actions include repossession cases and various non-repossession cases.

The Private Housing (Tenancies) (Scotland) Act 2016 creates a new type of Scottish Private Residential Tenancy which is expected to come into force on 1 December 2017. Civil disputes relating to the new tenancy including repossessions will be heard in the Housing and Property Chamber.

Consultation

A consultation in relation to the transfer of jurisdiction which included a section on legal aid took place between January and March 2017 with interested parties. There were 21 responses to this consultation. The [responses](#) and an [independent analysis report](#) are available on the Scottish Government website. The Law Society of Scotland were consulted as part of the public consultation however did not comment.

Impact Assessments

An equality impact assessment has been completed on the draft SSI and is attached. There are no equality impact issues.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is that civil legal aid will be available in the First-tier Tribunal for Scotland Housing and Property Chamber.

When the Government introduced the Bill for the Housing Act 2014, it estimated that the cost of legal assistance for the 700 private rented housing cases each year that would transfer from the Courts to the Tribunals would be about £25,000 – comprising £14,000 for Advice and Assistance, and £11,000 for Civil Legal Aid, based on continuing the same form of legal assistance in the First-Tier Tribunal as is currently available for these cases in the Courts, as is the aim. This takes into account that legal aid will not be available for landlord registration.

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