

POLICY NOTE

THE FIRST-TIER TRIBUNAL FOR SCOTLAND HOUSING AND PROPERTY CHAMBER (RULES OF PROCEDURE) AMENDMENT REGULATIONS 2017

SSI 2017/369

1. The above instrument is made in exercise of the powers conferred by paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014 (the 2014 Act). This instrument is subject to the negative procedure.

Policy Objectives

2. 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.

3. It is proposed that a single set of operational rules will apply across all jurisdictions in the Housing and Property Chamber from December 2017 when the First-tier Tribunal starts to hear more private rented sector housing cases including cases to be transferred from the sheriff court, the new letting agent regime and new tenancies. The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 were laid in the Scottish Parliament on 6th October 2017.

4. The Delegated Powers and Legislative Reform Committee considered the [regulations](#) at its meeting on 18 October and raised a number of points in relation to the drafting.

5. The points raised by the Committee are addressed as follows:-

- The definition of “assured tenancy reference to the First-tier Tribunal” is replaced with “assured tenancy reference” as this is the term which appears later in the Rules
- Rule 10(4) is reordered to be clearer
- In rule 37(3), paragraph (a) is removed as it is unnecessary because it is provided for by section 43(4) of the Tribunals (Scotland) Act 2014
- In rule 43, unnecessary repetition of the Property Factors (Scotland) Act 2001 is removed
- In rules 44(4) and 53(4) references to “the party” are changed to “the parties” to ensure that all parties are notified of an inspection
- Rules 69 and 71 are corrected to refer to an application under section 36(3) of the Housing (Scotland) Act 1988
- In rule 86 some references to “lessor” are corrected to “lessee”
- Rule 92(g) removes wording which correctly appears in rule 102(b)
- Rule 97 changes a reference to “both parties” to “the parties” to address the situation where there may be more than two parties.

- Rule 106 applies to an application which can be made by the landlord or the tenant so is redrafted to refer to the person making the application for clarity.

6. Therefore, the Scottish Government proposed that an amending instrument is made to address those points and will be laid for 28 days to ensure compliance with the requirements of the negative procedure.

Consultation

7. 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

8. 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.

9. 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
November 2017