

POLICY NOTE

THE FIRST-TIER TRIBUNAL FOR SCOTLAND HOUSING AND PROPERTY CHAMBER (INCIDENTAL PROVISIONS) REGULATIONS 2019

SSI 2019/51

1. The above instrument is made in exercise of the powers conferred by paragraph 80(1) of the Tribunals (Scotland) Act 2014 (the Act) and all other powers enabling them to do so. It is subject to the affirmative procedure because it amends primary legislation.
2. This is a technical instrument to make incidental provisions relating to functions or powers of the First-tier Tribunal Housing and Property Chamber.
3. The SSI is related to the First-tier Tribunal Housing and Property Chamber (Procedure) Amendment Regulations 2018. Amendments to the Debtors (Scotland) Act 1987 are also supported by amendments to the Tribunal rules to make clear that the Tribunal can make the same orders as those formerly made in the sheriff court, for example, time to pay orders.

Policy Objectives

4. The 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 by virtue of section 16 and Part 1 of schedule 1 of the Housing (Scotland) Act 2014. The Tribunal enables a less adversarial approach with greater accessibility for tenants and landlords.
6. The First-tier Tribunal can now make the orders equivalent to those 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 making an application and the matters to be taken into account also remain the same. Rules of procedure for the Tribunal were made by the [First-tier Tribunal Housing and Property Chamber \(Procedure\) Regulations 2017](#) as amended.
7. A number of issues have come to light since the transfer of functions and jurisdiction from the sheriff court so some technical amendments need to be made as follows:-

Regulations 2 and 6 amend the Debtors (Scotland) Act 1987 and the Bankruptcy and Diligence etc. (Scotland) Act 2007 respectively, to ensure that orders and directions operate effectively in the Tribunal in consequence of the transfer of jurisdiction from the sheriff court. The amendments also enable Tribunal rules to make equivalent operational procedure to the former court rules.

Regulations 3 to 5 provide minor drafting changes in consequence of the new operational procedures which came into force on 1 December 2017.

Consultation

8. There is minimal public interest in routine supplementary and consequential amendments. The President of Scottish Tribunals and the Scottish Courts and Tribunals Service have been consulted on these regulations.

Impact Assessments

9. 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.

10. 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