

2018 No. 378

TRIBUNALS AND INQUIRIES

**The First-tier Tribunal for Scotland Housing and Property
Chamber (Procedure) Amendment Regulations 2018**

Made - - - - - *13th December 2018*

Laid before the Scottish Parliament *17th December 2018*

Coming into force

for the purpose of regulation 1(2) *20th February 2019*

for the purpose of regulation 1(3) *6th March 2019*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraphs 4(2) and 5 of schedule 9 of the Tribunals (Scotland) Act 2014^(a) and all other powers enabling them to do so.

In accordance with paragraph 4(3) of schedule 9 of that Act, they have consulted the President of Tribunals and such other persons as they consider appropriate.

Citation and commencement

1.—(1) These Regulations may be cited as the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Amendment Regulations 2018.

(2) With the exception of regulation 2(17), these Regulations come into force on 20 February 2019.

(3) Regulation 2(17) comes into force on 6 March 2019.

Amendment of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

2.—(1) The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017^(b) (“the principal regulations”) are amended in accordance with paragraphs (3) to (28).

(2) In this regulation, any reference to a numbered rule is to the rule bearing that number in the schedule of the principal regulations.

(3) In rule 1 (application and interpretation), insert in the appropriate places—

““the 2007 Act” means the Bankruptcy and Diligence etc. (Scotland) Act 2007^(c),”

(a) 2014 asp 10.

(b) S.S.I. 2017/328, as amended by S.S.I. 2017/369.

(c) 2007 asp 3.

““charge for removing” means the charge for removing in the form set out in the schedule of the Removing from Heritable Property (Form of Charge) (Scotland) Regulations 2011(a),”

““order for removing from heritable property” has the same meaning as “a decree for removing from heritable property” given in section 214(1) of the 2007 Act(b),” and

““service by advertisement” means service in accordance with rule 6A.”.

(4) For rule 5(4) (requirements for making an application), substitute—

“(4) Where the address of a party is not known to the person making an application(c) under these Rules, the applicant must state this in the application and complete a request for service by advertisement in accordance with paragraph (5).

(5) Any request for service by advertisement must provide details of any steps taken to ascertain the address of the party and be accompanied by a copy of any notice required under these Rules which the applicant attempted to serve on the other party and evidence of any attempted service.

(6) The First-tier Tribunal may direct any further steps which should be taken before the request for service by advertisement will be granted.

(7) Any relevant notice period begins on the date the advertisement is published in accordance with rule 6A.

(8) The First-tier Tribunal must not grant the request where any—

- (a) documents requested under paragraph (3) are not received, or
- (b) further steps directed under paragraph (6) are not taken,

within such reasonable period from the date of such request or such direction as the Chamber President considers appropriate.”.

(5) After rule 5 (requirements for making an application), insert—

“Time limits

5A.—(1) This rule applies where no time limit for making an application is prescribed by or under another enactment.

(2) Where the application relates to a right of appeal from any decision, the application must be lodged with the First-tier Tribunal, in accordance with rule 5, within 21 days after the date on which notice of the decision to which the application relates was sent to the applicant.”.

(6) After rule 6(5) (service) insert—

“(6) Where an action for removing is against a tenant or occupier in possession of heritable property and the name of the tenant in possession or occupier is not known and cannot reasonably be ascertained, the requirement for the tenant’s or occupier’s name set out in rule 65(a)(iii), 66(a)(iii), 77(a)(iii), 79(a)(iii) or 109(a)(iii) is waived and any formal communication may be served on “the Occupier”.”.

(7) After rule 6 (service), insert—

“Service by advertisement

6A.—(1) Where any formal communication requires to be served on a party under these Rules, and the party’s address is unknown, the communication is deemed to be served if it has been publicised by advertisement on the website of the First-tier Tribunal for not less

(a) S.S.I. 2011/158.

(b) Section 214(1) was amended by the Criminal Finances Act 2017 (c.22), schedule 5, paragraph 91(2).

(c) The form of application provided by the First-tier Tribunal for Scotland by virtue of rule 4 in the schedule of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 is available on the website of the First-tier Tribunal for Scotland at <https://www.housingandpropertychamber.scot/>.

than 14 days or, in the event that another enactment provides for a longer period of notice for the communication, for not less than that period.

(2) The advertisement mentioned in paragraph (1) must disclose—

- (a) details of the names and addresses of the parties (so far as they are known),
- (b) details of the type of application or document,
- (c) the address of the property to which the application or document relates, and
- (d) any other information which the First-tier Tribunal must communicate to parties under these Rules.

(3) If the party's address becomes known after service by advertisement, the First-tier Tribunal must order—

- (a) any application before the First-tier Tribunal to be amended to include the party's address,
- (b) any document required by legislation to be served, by the person who made the request under rule 5(5), on the person who should receive notification, and
- (c) any application accepted by the First-tier Tribunal to be served on that party or that party's representative.

(4) Where paragraph (3) applies, the First-tier Tribunal may direct a review of the timescales for further procedure in relation to the application, if it thinks fit in the interests of justice.”.

(8) In rule 10(4) (representatives), after “lay representative” insert “or legal representative”.

(9) After rule 14 (amendment raising new issues) insert—

“Request to amend the application in respect of matters other than new issues

14A.—(1) Where a new issue is not raised, a party may request to amend the application, including the sum claimed, by intimating the amendment to any other party and the First-tier Tribunal at least 14 days prior to a case management discussion or hearing.

(2) The First-tier Tribunal may consent to the amendment on such conditions, if any, as the First-tier Tribunal thinks fit.”.

(10) After rule 16 (directions) insert—

“Regulation of procedure

16A. Subject to the provisions of housing legislation, the Tribunals Act and these Rules, the First-tier Tribunal may regulate its own procedure, including—

- (a) extending or shortening the time for complying with any rule or order,
- (b) specifying a case as a lead case where two or more cases—
 - (i) are before the First-tier Tribunal,
 - (ii) give rise to common or related issues of fact or law, and
 - (iii) have not been finally determined,
- (c) adjourning or postponing cases which are not the lead case until the common or related issues have been determined in the lead case,
- (d) ordering a delay in execution of an order by the First-tier Tribunal at any time before it is executed.”.

(11) In rule 26 (decisions of the First-tier Tribunal), after paragraph (10) insert—

“(11) Where a decision includes an order for eviction or payment, the First-tier Tribunal may provide a copy of the decision to the Registry Trust(a).

(12) Where in the course of proceedings before the First-tier Tribunal it becomes known that—

- (a) a landlord is not registered under the 2004 Act(b),
- (b) a property factor is not registered under the 2011 Act(c), or
- (c) a letting agent is not registered under the 2014 Act(d),

the First-tier Tribunal may provide a copy of any decision to the appropriate local authority or the Scottish Ministers.”.

(12) In rule 28 (adjournment or postponement of a hearing), in paragraph (2)(c) before “produce” insert “at the direction of the First-tier Tribunal”.

(13) In rule 37 (application for permission to appeal a decision of the First-tier Tribunal) after paragraph (3) insert—

“(4) Paragraph (1) does not apply to an appeal made under section 92 (appeal against refusal to register or removal from register) of the 2004 Act.”.

(14) In rule 39 (review of a decision), after paragraph (8) insert—

“(9) Paragraph (1) does not apply to an appeal made under section 92 (appeal against refusal to register or removal from register) of the 2004 Act.”.

(15) For rule 41 (enforcement of decisions) substitute—

“**41.**—(1) An order in pursuance of a decision of the First-tier Tribunal, or a copy of such an order certified by the First-tier Tribunal, may be enforced as if it were an extract registered decree bearing a warrant for execution issued by the sheriff court.

(2) An order cannot be enforced under paragraph (1) until the expiry of the period within which an application may be made for permission to appeal a decision of the First-tier Tribunal—

- (a) under regulation 2(1) of the Scottish Tribunals (Time Limits) Regulations 2016(e), or
- (b) as determined by the First-tier Tribunal under regulation 2(2) of those Regulations.”.

(16) After rule 41 (enforcement of decisions), insert—

“Interest on orders for payment

41A.—(1) The First-tier Tribunal may include interest when making an order for payment.

(2) Where paragraph (1) applies, the interest is to be at the rate either—

- (a) stated in the relevant tenancy agreement, or
- (b) ordered by the First-tier Tribunal,

and running from the date of the decision of the First-tier Tribunal.

(a) Registry Trust Limited is a company limited by guarantee and registered in Cardiff, company number 1896592. Information about the Registry Trust may be found on its website at www.registry-trust.org.uk.

(b) 2004 asp 8.

(c) 2011 asp 8.

(d) 2014 asp 14.

(e) S.S.I. 2016/231. There are no amendments which are relevant to these Regulations.

Actions for removing from heritable property

41B.—(1) For the purposes of section 216(1)(a) of the 2007 Act, the charge for removing must be served by a sheriff officer on the defender—

- (a) personally, or
- (b) by being left in the hands of a resident at the defender’s address.

(2) Where a sheriff officer has been unsuccessful in executing service in accordance with paragraph (1), the officer may, after making diligent enquiries, serve the charge for removing by leaving it at the defender’s address.

Notice of date of removal

41C.—(1) Prior to the execution of an order for removing from heritable property, notice of the date of removal must be served by the sheriff officer by leaving the notice at the heritable property.

(2) The date specified in the notice of the date of removal must allow for a period of notice of not less than 48 hours after the notice is served.

(3) The First-tier Tribunal may, at the request of the applicant, on cause shown, vary or dispense with the period of notice mentioned in paragraph (2).

Evidence of service and notice

41D. It is sufficient evidence that—

- (a) a charge for removing mentioned in rule 41B has been served,
- (b) a notice of the date of removal mentioned in rule 41C has been served,

if a certificate to that effect is signed by the sheriff officer.

Inventory of effects removed

41E. For the purposes of section 216(3)(b) of the 2007 Act, the inventory of effects removed must be witnessed.

Execution of order

41F. Where an order for removing from heritable property has been executed, the sheriff officer must—

- (a) complete a certificate of execution,
- (b) ensure the certificate of execution is witnessed, and
- (c) affix a copy of the certificate of execution in a sealed envelope to the main door of the heritable property.”.

(17) After rule 41F (execution of order) insert—

“Notice of interest claimed under the Debtors (Scotland) Act 1987

41G.—(1) A creditor wishing to recover interest under an order of the First-tier Tribunal must serve on the other party the notice referred to in sections 1(7) (time to pay directions) and 5(7) (time to pay orders) of the Debtors (Scotland) Act 1987(a) (notice claiming and specifying amount of interest) in the case of an order requiring payment by—

- (a) instalments, no later than 14 days before the date on which the last instalment is due to be paid, or

(a) 1987 c.18.

- (b) lump sum within a certain period, no later than 14 days before the last day of such period.

Applications for time to pay orders

41H.—(1) A party who intends to apply for a time to pay order under section 5 of the Debtors (Scotland) Act 1987 must serve a copy of the application mentioned in subsection (2) of that section on the creditor.

(2) An order by the First-tier Tribunal under section 6(4) of the Debtors (Scotland) Act 1987 (creditor to furnish particulars of decree or other document) must require the creditor to provide—

- (a) the date of the order,
- (b) the names of the parties,
- (c) details of the debt and any interest due, and
- (d) any other information the First-tier Tribunal considers necessary.

(3) A creditor may object to the granting of an order within 14 days of the copy of the application being served on them.

(4) If no written objection is received from the creditor within the 14-day period, the First-tier Tribunal must make a time to pay order in accordance with the application.

(5) If a written objection is received from the creditor within the 14-day period, the First-tier Tribunal must appoint a date for the hearing of the application.”.

(18) In rule 46(1) (application and interpretation)—

- (a) before “allocated” insert “transferred or”,
- (b) in sub-paragraph (a) omit “or”,
- (c) after sub-paragraph (b) insert—
 - “(c) the 1988 Act,
 - (d) the 2011 Regulations, or
 - (e) the 2016 Act.”.

(19) Omit rule 50 (application to appeal against a decision of the landlord).

(20) In rule 59 (application to appeal the decision of a landlord in relation to adapting a rented house for a disabled person), in the heading for “for a disabled person” substitute “ or carrying out work to improve the energy efficiency of the house”.

(21) In rule 65 (application for order for possession in relation to assured tenancies)—

- (a) in paragraph (b)(ii) for “notice by landlord” substitute “notice served on the tenant by the landlord”,
- (b) at the end of paragraph (b)(iv) omit “and”, and
- (c) after paragraph (b)(iv) insert—
 - “(v) a copy of the notice given to the local authority by the landlord under section 11 of the Homelessness (Scotland) Act 2003(a) (if applicable), and
 - (vi) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970(b) (if applicable), and”.

(22) In rule 66 (application for order for possession upon termination of a short assured tenancy)—

- (a) at the end of paragraph (b)(ii) and (iii) omit “and”, and

(a) 2003 asp 10.
(b) 1970 c.35.

(b) after paragraph (iii) insert—

“(iv) the notice to quit served by the landlord on the tenant;

(v) a copy of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable), and

(vi) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), and”.

(23) After rule 66 (application for order for possession upon termination of a short assured tenancy), insert—

“Application to modify a tenant’s right to shared accommodation

66A. Where a landlord makes an application under section 21(3) (special provisions applicable to shared accommodation) of the 1988 Act, the application must—

(a) state—

(i) the name, address and registration number (if any) of the landlord,

(ii) the name, address and profession of the representative of the landlord,

(iii) the name and address of the tenant, and

(iv) the details of the termination of rights or modification proposed,

(b) be accompanied by a copy of the tenancy agreement, and

(c) be signed and dated by the landlord or the representative of the landlord.”.

(24) In rule 71 (parties to be notified by the First-tier Tribunal) after “18(1),” insert “21(3),”.

(25) In rule 77 (application for possession)—

(a) in paragraph (b)(i) for “to the tenant” substitute “served by the landlord on the tenant”, and

(b) in paragraph (b)—

(i) for sub-paragraph (ii) substitute—

“(ii) a copy of the notice given to the local authority by the landlord under section 11 of the Homelessness (Scotland) Act 2003 (if applicable),”.

(ii) omit sub-paragraph (iii),

(iii) at the end of sub-paragraph (iv) insert “and”, and

(iv) after sub-paragraph (iv) insert—

“(v) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable); and”.

(26) In rule 79(a)(iii) (application to evict an occupier on termination of a tenancy), after “occupier” insert “(if known)”.

(27) In rule 103 (application for order for payment where landlord has not paid the deposit into an approved scheme)—

(a) for the heading substitute—

“Application for order for payment where landlord has failed to carry out duties in relation to tenancy deposits”, and

(b) for “court orders” substitute “First-tier Tribunal orders”.

(28) In rule 109 (application for an eviction order)—

(a) in paragraph (a)(iii) after “tenant” insert “(if known)”, and

(b) after paragraph (b)(iii) insert—

“(iv) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), and”.

St Andrew’s House,
Edinburgh
13th December 2018

ASH DENHAM
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Regulation 2 makes amendments to the schedule which sets out the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure.

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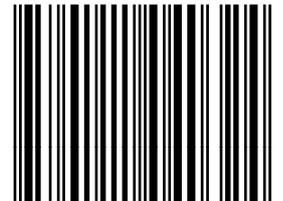
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