

## POLICY NOTE

### THE FIRST-TIER TRIBUNAL FOR SCOTLAND HOUSING AND PROPERTY CHAMBER (AMENDMENT) REGULATIONS 2023

#### SSI 2023/6

1. The above instrument was made by the Scottish Ministers in exercise of the powers conferred by Schedule 9, Paragraph 4 of the Tribunals (Scotland) Act 2014 and section 12(1) of the Cost of Living (Tenant Protection) (Scotland) Act 2022 and all other powers enabling them to do so. The instrument is subject to negative procedure.

#### **Purpose of the instrument**

2. The instrument amends the First-tier Tribunal's existing procedural rules to add new rules to accommodate the new appeal mechanism created by the Cost of Living (Tenant Protection) (Scotland) Act 2022.

#### **Policy Objectives**

3. Schedule 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 ("the 2022 Act") introduced a variable rent cap with a power for landlords to apply to a rent officer for an increase in rent above the rent cap to reflect increases in prescribed property costs. The landlord or tenant can appeal the decision of the rent officer to the First-tier Tribunal. There are currently no bespoke procedural rules in place for these appeals.
4. Under paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014, the Scottish Ministers have the function of making rules of procedure for the First-tier Tribunal, such rules being made by regulations which are subject to negative procedure (see paragraph 5(2) of the 2014 Act. These Regulations provide procedural rules for the new appeals process created by the 2022 Act.
5. The prescribed property costs appeals process is designed to enable a landlord or tenant to seek a verification of the decision taken by the rent officer – namely, whether the increase claimed by the landlord is within the strict criteria set by the Act (the lower of either 50% of cost increase or, currently, 3% of overall rent). The intention behind the appeals process is that there will be limited discretion for the rent officer or the Tribunal at appeal so that landlords and tenants can obtain quick decisions on the proposed rent increase and the pressure on the Tribunal's time is limited.
6. Accordingly, the procedural rules created by the Regulations reflect this intention – the appeal is to be dealt with by way of written submissions without an oral hearing. There is no discretion given to the Tribunal and there is no assessment of whether the increase is reasonable or otherwise. The Tribunal is tasked with checking whether the increased costs faced by the landlord are indeed "prescribed property costs" and whether those costs are within the limits set in the 2022 Act.

## **Consultation**

7. Paragraph 4(3) of schedule 9 of the Tribunals (Scotland) Act 2014 requires the Scottish Ministers to consult the President of Tribunals and such other persons as they consider appropriate when making procedural rules under the powers in paragraph 4(2). To comply with this requirement the President of Tribunals (Lord Woolman) has been consulted. In addition, other parties that the Scottish Ministers consider appropriate were also consulted as follows: - the Lord President, the Tribunal Chamber President, and the Information Commissioner's Officer (ICO) have also been consulted.
8. A shortened consultation period was necessary due to the expedited timescale required to implement the new appeal route (which itself was established by emergency legislation). Advance engagement with consultees took place and the consultation period was from 23 November 2022 to 11 January 2023. All consultees responded, and further engagement with the consultees and their officials took place. The draft SSI was then amended to take account of the consultation responses, for example, to make clear that the appeal is based only on written submissions and to clarify the information that the Tribunal can disclose when intimating receipt of an appeal and when making their final decision.
9. In response to the ICO's consultation response and recommendations, we have engaged with both the First-tier Tribunal and RSS regarding the data processing considerations arising from the SSI. The First-tier Tribunal has its own data protections policies in place, and will be responsible for reviewing the procedural rules in that context alongside their own privacy policy. RSS have reviewed their online guidance and documents associated with the process to ensure that their obligations under data protection legislation are complied with.

## **Impact Assessments**

10. Impact assessments have been completed as part of the development of the Cost of Living (Tenant Protection) (Scotland) Act. All Impact Assessments for the Bill are available on the Scottish Government website, namely:
  - Equality Impact Assessment
  - Fairer Scotland Duty Impact Assessment
  - Island Communities Impact Assessment
  - Business Regulatory Impact Assessment
  - Child Rights and Wellbeing Impact Assessment
  - Data Protection Impact Assessment

As noted above, the Scottish Ministers have engaged with ICO in the preparation of these Regulations.

No impact assessments have been conducted in relation to these Regulations.

## **Financial Effects**

The Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights confirms that no BRIA is necessary as the instrument is procedural in nature and has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Local Government and Housing Directorate

*January 2023*