

# **A Consultation on Procedure of the First-tier Tribunal Housing and Property Chamber**

## **Part One**

**The First-tier Tribunal Housing  
and Property Chamber (Procedure)  
(Scotland) draft regulations 2017**

## **Part Two**

**Proposals for the provision of publicly  
funded legal assistance in the First-tier  
Tribunal Housing and Property Chamber**

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## Introduction

### **The First-Tier Tribunal for Scotland Housing and Property Chamber**

1. The Housing and Property Chamber aims to deliver benefits of specialism, consistency, and improved access to justice for both tenants and landlords in the private rented sector.
2. The First-tier Tribunal is a judicial decision-maker and, as such, will need to allow sufficient time for each case to ensure proper access to justice.
3. The Housing and Property Chamber enables a less adversarial approach in comparison to the Sheriff Court. The aim is for a system that will allow most people to engage directly with the First-tier Tribunal, and where legal representation is not the norm.
4. It is proposed that a single set of operational rules will apply across all jurisdictions in the Housing and Property Chamber from December 2017. This aims to streamline the existing procedures and provide consistency of approach across the Chamber where relevant and practical.

### **The Housing and Property Chamber Implementation Project**

5. **Phase I** of the Project transferred the existing functions and members of the Private Rented Housing Panel and Homeowner Housing Panel and associated committees to the First-tier Tribunal on 1 December 2016. First decisions in relation to these jurisdictions are now heard in the First-tier Tribunal Housing and Property Chamber with a general onward appeal to the Upper Tribunal for Scotland.
6. **Phase II** of the Project enables the First-tier Tribunal to start 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.
7. The transfer of jurisdictions from the Sheriff Court and introduction of the new tenancies will be effective from December 2017.
8. The First-tier Tribunal will start to hear cases relating to the new letting agent regime when all aspects of its regulation come into force in January 2018.

## **Purpose and Scope of this Consultation**

9. The purpose of this consultation is to seek your views on the operational procedure of the First-tier Tribunal for Scotland Housing and Property Chamber under Phase II of the Chamber Implementation Project.
10. No fee will be charged for anyone taking a case to the Housing and Property Chamber.
11. Part One seeks views on the draft First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the 2017 Rules). We are not seeking views on the implementation of the Tribunals (Scotland) Act 2014, the Housing (Scotland) Act 2014, the Private Tenancies (Scotland) Act 2016, or any other enactment.
12. Part Two seeks your views on the provision of publicly funded legal assistance in the Housing and Property Chamber.
13. The First-tier Tribunal Housing and Property Chamber (Procedure) (Scotland) Draft Regulations 2017 (the 2017 Rules) do not provide any new housing powers or rights for tenants, landlords or others taking a case to the First-tier Tribunal. When jurisdictions transfer from the Sheriff Court under the implementation of the 2014 Housing Act, the First-tier Tribunal will be able to make orders equivalent to those made by Sheriff Courts. For example, Sheriffs can make orders to evict tenants and the First-tier Tribunal will be able to do the same. The basis for raising a case and the matters to be taken into account will remain the same.
14. The First-tier Tribunal will not hear cases relating to criminal matters such as illegal eviction. These must remain in the jurisdiction of the courts.
15. The First-tier Tribunal will not hear cases relating to the social rented sector.
16. The Housing Scotland Act 2014 contains an order-making power to transfer cases relating to Houses in Multiple Occupation from the jurisdiction of the Sheriff Court to the First-tier Tribunal. Houses in Multiple Occupation are not included in the Phase II Chamber Implementation Project. This is because the legislation relating to those cases covers issues wider than just the private rented sector, and we need to consider and consult further on the best way forward.
17. It is proposed that a single set of operational rules will apply across all jurisdictions in the Housing and Property Chamber from December 2017.
18. The draft First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 are attached at [Annex A](#).  
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## Legislative Background

### **Tribunals (Scotland) Act 2014**

19. The background and details of the policy objectives relating to the Tribunals Scotland Act 2014 are set out in the [Policy Memorandum](#) which accompanied the 2013 Tribunals Bill.

20. The Tribunals (Scotland) Act 2014 (the Tribunals Act) created a new, two-tier structure for devolved tribunals in Scotland – to be known as the Scottish Tribunals. There is a First-tier Tribunal for first instance decisions and an Upper Tribunal (primarily for dealing with appeals) with a common system of leadership, appointments, practice and procedures, wherever practicable, under the overall leadership of the Lord President of the Court of Session.

21. The Chamber Regulations divide the First-tier Tribunal for Scotland (First-tier Tribunal) into the following 5 chambers

- Mental Health Chamber;
- Housing and Property Chamber;
- Health and Education Chamber;
- General Regulatory Chamber; and
- Tax Chamber

22. A Chamber President will be appointed to each of the Chambers. Ms Aileen Devanny is President of the Housing and Property Chamber.

23. A suite of secondary legislation supports the establishment of the Housing and Property Chamber and the transfer of existing housing tribunals under Phase I. Relevant and associated legislation is set out at [Annex B](#)

### **Housing (Scotland) Act 2014**

24. The background and details of the policy objectives relating to the Housing (Scotland) Act 2014 are set out in the [Policy Memorandum](#) which accompanied the Housing Bill.

25. The 2014 Act makes provision for the framing of rules to regulate the practice and procedures to be adopted by the Scottish Tribunals. Tribunal Rules are to be made by the Court of Session by act of seredunt and the 2014 Act provides the Scottish Civil Justice Council (SCJC) with the function of preparing and submitting draft Tribunal Rules to the Court of Session.

26. As the SCJC was newly established during the passage of the 2014 Act, and the rule-making function could not be transferred at that time, the 2014 Act included provision for Scottish Ministers to make rules for the Scottish Tribunals on an interim basis. The SCJC's function will extend to reviewing the practice and procedure used in the Scottish Tribunals, including any rules made by the Scottish Ministers.

27. Part 3 and Schedule 1 of the Housing (Scotland) Act 2014 (the Housing Act) transfers jurisdiction for civil cases relating to the private rented sector from the Sheriff Court to the First-tier Tribunal. The grounds (reasons) which allow someone to raise an action and the issues to be taken into account in deciding a case would remain the same, but the decision-maker would change from the Sheriff to the First-tier Tribunal.

28. Further details including the types of cases that will transfer are included in the [policy memorandum](#) for the Housing Bill and in Part 3 of the Housing Act.

29. Part 4 of the Housing Act provides for a regulatory framework for letting agents.

### **Private Housing Tenancies (Scotland) Act 2016**

30. The Private Housing (Tenancies) (Scotland) Act 2016 creates a new private residential tenancy which aims to improve security and stability for tenants, balanced with safeguards for landlords, lenders and investors.

31. [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016](#) enabled the Homeowner Housing Panel and the Private Rented Housing Panel to transfer to the First-tier Tribunal with their existing functions and members, insofar as practicable, on 1 December 2016.

32. [The First-tier Tribunal for Scotland Housing and Property Regulations](#) enabled the former housing tribunals (the Homeowner Housing Panel and the Private Rented Housing Panel) to transfer to the First-tier Tribunal with their existing operational procedures as far as practicable.

33. Schedule 1 to the [Chamber \(Procedure\) Regulations 2016](#) sets out the rules of procedure in respect of proceedings before the First-tier Tribunal for Scotland Housing and Property Chamber. The rules provide for the transfer of existing housing tribunals under Phase I of the Chamber Implementation Project. Part 2 of schedule 1 covers proceedings in respect of homeowners and Part 3 covers proceedings in respect of the private rented housing sector, including landlord applications and assured tenancy references.

### **Administration of Tribunals**

34. The [Scottish Courts and Tribunals Service](#) is responsible for providing support and guidance to applicants.

35. The [Judicial Appointments Board for Scotland](#) is responsible for recommending to the Scottish Ministers suitable candidates for appointment to the Scottish Tribunals. An appointment round is currently underway to support the expansion of the Housing and Property Chamber in 2017.

36. The Lord President of the Court of Session is responsible for ensuring that appropriate arrangements are made and maintained as to the welfare of the members of the Scottish Tribunals including the provision of training and guidance.

## **Consultation**

37. The President of the Housing and Property Chamber and the operational team of the Scottish Courts and Tribunals Service have been consulted in the development of the 2017 Rules.

38. In accordance with paragraph 4(3) of schedule 9 of the Tribunals Act, the Scottish Ministers will continue to consult with the President of the Scottish Tribunals.

39. In addition to the formal consultation process, the transfer of the existing housing tribunals to the First-tier Tribunal in December 2016 may also inform improved operational procedures for the 2017 Rules.

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### **Part One: Draft First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (The 2017 Rules)**

40. Part one of this consultation asks for your views on the draft First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, attached at [Annex A](#).

41. Our policy intention is to produce procedural rules which can be easily understood by all parties, and which will create an efficient and just system for determining private rented sector housing disputes.

42. It is proposed that a single set of operational rules will apply across all jurisdictions in the Housing and Property Chamber from December 2017. So far as possible, a consistent procedure has been adopted for progressing different types of cases before the Chamber. Such an approach ensures parties know what to expect in advance of submitting an application, and the proceedings before the First-tier Tribunal satisfy the requirements for fairness and impartiality in the progress of cases.

43. Parts 1, 2 and 3 of the 2017 Rules will replace the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016. We aim to clarify some of the original policy intentions, to reduce complexity and to make it more user-friendly.

## **PART 1: Procedure common to all proceedings**

44. Part 1 aims to set out in broad chronological order existing procedures that are common across the Chamber. The layout is intended to guide the user through the process, from the initial application through to reviews, and a final appeal process.

45. Part 1 applies to anyone with an application lodged in the correct way, no matter what type of housing case is in dispute.

### **What is new in Part 1?**

#### **Rule 16 Case Management Discussion**

46. Rule 16 introduces case management discussions. It promotes efficiency and early dispute resolution and fits with the inquisitorial nature of the tribunal. The First-tier Tribunal may do anything at a case management discussion which it may do at an actual hearing, including making a decision. Case management discussions should reduce the number and length of hearings due to the increased understanding of the parties and the First-tier Tribunal.

#### **Rule 17 Power to determine the proceedings without a hearing**

47. Rule 17 removes an unnecessary burden in the 2016 rules for the First-tier Tribunal to seek permission from all parties to agree to dispense with a hearing, in certain circumstances. Rule 17(b) provides consistency of approach and efficiency across the Chamber by making clear when the First-tier Tribunal must make a decision without a hearing in relation to a decision made by the First-tier Tribunal.

#### **Rule 24 Duties of Chairing Member at hearing**

48. Rule 24 introduces a new duty on the chairing member to explain the tribunal process and ensure that the parties are on an equal footing procedurally. This duty aims to help with transparency and the application of a more consistent and fairer approach across all hearings. It reinforces the overriding objective and user-focused policy intention.

#### **Rules 25 Voting for and Giving a Decision**

49. Rule 25 aims to reduce bureaucracy whilst maintaining rights, accessibility, and public interest. It removes the need for a full statement of reasons in relation to correcting, setting aside, and reviewing a decision of the First-tier Tribunal. There is also no need for a full statement of reasons to be prepared where preliminary issues are dealt with following directions of the First-tier Tribunal.



## **Rule 26 Postponement**

50. Rule 26 provides for efficiency in making clear when a tenant may not apply for a postponement of a hearing.

## **Rule 33 Clerical mistakes and accidental slips or omissions**

51. Rule 33 creates a separate correction of clerical mistakes and accidental slips or omissions.

## **Rules 35 and 36 - Reviews and Appeals**

52. The revised review provision at rule 36 ties the review into the permission to appeal stage at rule 34. This should simplify and tighten up the timescales for the review and appeals procedure so as not to elongate the process. This review provision will be generic across the First-tier and Upper Tribunals.

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## **PART 2**

### **Procedure in respect of Homeowner Applications**

53. Part 2 contains information that a homeowner will need to be able to make an application about an alleged failure of a property factor to comply with the Property Factors (Scotland) Act 2011. This Part is the same as the 2016 rules for procedures relating to property factoring and maintenance, registration matters and enforcement of a code of practice.

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## **PART 3**

### **Procedure in respect of Private Rented Applications Chapters 1-4 amending the 2016 rules**

54. Part 3 contains information that an applicant will need to be able to make an application for private rented applications. Each chapter covers a particular jurisdiction and sets out the parties to the application.

55. This Part is the same as the 2016 rules in relation to Chapters 1, 2, 3, and 4 and property repairs, housing conditions and landlord registration.

## **Chapter 5: Procedure in respect of Letting Agents**

56. Chapter 5 contains information that an applicant will need to be able to make an application for letting agent applications when the new regime comes into force early in 2018.

57. These case types include alleged failures to comply with the new letting agent code of practice and registration. We expect case handling will be similar to homeowner applications in Part 2; therefore, the Tribunal procedures follow a similar approach.

## **Chapters 6-10: Procedures in respect of jurisdictions to transfer to the First-tier Tribunal from the Sheriff court.**

58. Chapters 6-10 relates to applications in respect of tenancy related disputes that are currently heard in the Sheriff Court including:

- Chapter 6: Procedure for Landlord Registration Applications
- Chapter 7: Procedure for applications under the 1984 Act
- Chapter 8: Procedure for applications under the 1988 Act
- Chapter 9: Procedure for adaptations of rented houses applications
- Chapter 10: Procedure for tenancy deposit applications

59. Chapters 7 and 8 include applications where a landlord applies for an order for possession to evict a tenant.

## **Chapter 11**

60. Chapter 11 relates to procedures for private residential tenancy applications including evictions. There are some similarities in the procedures for Chapters 7 and 8 above. The new tenancies are due to come into force in December 2017.

## **Transitional arrangements**

61. It is proposed that the 2017 rules will apply across all jurisdictions in the Housing and Property Chamber from 1 December 2017 – the transfer day.

62. It is proposed that cases in progress (i.e. an application that has been accepted) in the Sheriff Court under Chapters 6-10 on the transfer day will continue in the Sheriff Court until completion or final appeal. Time limits which have started to run prior to commencement of these regulations and have not expired shall continue to apply.

## **Consequential arrangements**

63. We propose to replace the 2016 rules with the 2017 rules on the transfer day. Where an application has been accepted by the First-tier Tribunal prior to 1 December 2017, the 2016 Rules will continue to apply to that application until completion or appeal to the Upper Tribunal.

64. Schedule 2 of the 2016 rules contains forms to be used for certain purposes of the Rent (Scotland) Act 1984 and the Housing (Scotland) Act 1988, and for the purpose of proceedings before the First-tier Tribunal. We will make consequential amendments to the statutory forms in the Schedule in relation to the jurisdictions due to transfer to the Housing and Property Chamber. Consistent with good Equality practice, we propose to make terms gender neutral.

## **Equality Impact Assessment**

65. We are assessing the impact of the 2017 rules on equality communities as the Housing and Property Chamber expands in December 2017. We will develop our EQIA building on our related assessments outlined in paragraphs 66, 67 and 68.

66. [This EQIA](#) relates to six sets of regulations which set out the composition of the Housing and Property Chamber of the First-tier Tribunal for Scotland (First-tier Tribunal) and the Upper Tribunal for Scotland (Upper Tribunal); transfer the functions and members of the private rented housing panel (prhp) and homeowner housing panel (hohp) and their respective committees, and create rules of procedure for the Housing and Property Chamber.

67. [This EQIA](#) relates to provisions in the Private Rented Housing (Scotland) Act 2011 which give landlords the right to apply to the PRHP for assistance in exercising their right of entry in respect of the repairing standard.

68. [This EQIA](#) relates to the Private Rented Housing Panel (Tenant and Third Party Applications) (Scotland) Regulations 2015 which make further provision about the process for making and determining applications.

## Questions on Part One

Q.1 Do you have any comments or suggestions on the layout and ordering of the procedure common to all procedures in Part 1 from a user perspective?

Yes ☐ No ☐

Q.2 Do you have any comments on Part 2 (Procedure in respect of Homeowner Applications) about amendments to the existing rules for Homeowner applications?

**Q.3** Are you content with the amendments to the 2016 regulations in relation to Repairing Standard Applications in Chapter 1?

**Yes** ☐ **No** ☐

If you are not content, please explain why?

**Q.4** Are you content with amendments to the 2016 regulations in relation to Landlord Applications in Chapter 2?

**Yes** ☐ **No** ☐

If you are not content, please explain why?

**Q.5** Are you content with amendments to the 2016 regulations in relation to Assured Tenancy References in Chapter 3?

**Yes** ☐ **No** ☐

If you are not content, please explain why?

Q.6 Are you content with amendments to the 2016 regulations in relation to regulated tenancy references in Chapter 4?

Yes ☐ No ☐

If you are not content, please explain why?

#### Questions on jurisdictions due to transfer from the Sheriff Court

Q.7 Do you agree with the procedure for applications under the 1984 Act in Chapter 7?

Yes ☐ No ☐

If you do not agree, please explain why?

Q.8 Do you agree with the procedure for applications under the 1988 Act in Chapter 8?

Yes ☐ No ☐

If you do not agree, please explain why?

Q.9 Do you agree with the procedure for adaptations of rented houses applications in Chapter 9?

Yes ☐ No ☐

If you do not agree, please explain why?

Q.10 Do you agree with the procedure for tenancy deposit applications in Chapter 10?

Yes ☐ No ☐

If you do not agree, please explain why?

Q.11 Do you have any other comments on the operational procedures for jurisdictions due to transfer from the Sheriff Court under Chapters 6-10?

#### Questions on new jurisdictions

Q12 Do you agree with the procedure for letting agent applications in Chapter 5?

Yes ☐ No ☐

If you do not agree, please explain why?



Q.13 Do you agree with the procedure for applications under the 2016 Act?

Yes ☐ No ☐

Q.14 Are there any particular equality issues that you think we should consider in relation to the operational procedures as the Housing and Property Chamber expands in December 2017?

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## Part Two: Provision of publicly funded legal assistance in the First-tier Tribunal for Scotland Housing and Property Chamber.

69. Part Two of this consultation refers to operational procedures contained in the 2017 rules at [Annex A](#) and seeks your views on proposals:

- a. To make publicly-funded legal assistance available to cases due to transfer to the First-tier Tribunal relating to private rented sector housing tenancy disputes including:
  - Chapter 6 – Procedure for Landlord Registration
  - Chapter 7 – Procedure for applications under the 1984 Act
  - Chapter 8 – Procedure for applications under the 1988 Act
  - Chapter 9 – Procedure for adaptations of rented houses applications
  - Chapter 10 – Procedure for tenancy deposit applications
  - Chapter 11 – Procedure for private residential tenancy applications

Chapters 6-10 include the private rented sector housing tenancy disputes currently heard in the Sheriff Court using summary cause procedure

Chapter 11 provides for the new residential tenancies due to come into force in December 2017.

- b. that there is no provision for publicly-funded legal assistance for procedure in respect of Letting Agent Applications under Chapter 5.

70. Scottish Government Tribunals' policy intention is for publicly funded legal assistance in the First-tier Tribunal to be considered on a jurisdiction by jurisdiction basis in advance of the tribunals transferring into their respective chambers of the Tribunal. There is currently no provision for publicly funded legal assistance in the Housing Chamber.

71. During the parliamentary passage of the Private Housing Tenancies (Scotland) Act 2016, concerns were raised about funding for publicly funded legal assistance in the First-tier Tribunal for private rented sector cases. In particular, the potential removal of eviction cases from the scope of civil legal aid as jurisdiction transfers from the Sheriff Court to the First-tier Tribunal through the implementation of the Housing (Scotland) Act 2014. The former Minister for Housing made a commitment to consult on the provision of publicly funded legal assistance as part of the consultation on the operational procedures.

## **Transfer of Private Rented Sector Tenancy Related Disputes to the First-Tier Tribunal**

72. The main difference for private rented sector housing disputes in the transfer from the courts to the First-tier Tribunal will be the move to more informal and inquisitorial proceedings. In the courts a Sheriff is required to make a decision based on the evidence presented by parties. This may lead to disadvantage where a party does not have assistance from someone with knowledge of the courts system or a lawyer. In the First-tier Tribunal, a case may be heard by a legal member and an ordinary housing member with specialist knowledge who will have the time and expertise to ask questions and seek additional information as required. The operating rules are designed to foster an active, interventionist and enabling approach.

73. The proceedings of the First-tier Tribunal must be managed in accordance with the application of the overriding objective set out in rules 2 and 3 of the 2017 rules. This ensures that the Tribunal will help parties understand the procedure to ensure that the parties are able to present their case whilst maintaining fairness and impartiality. The overriding objective of the First-tier Tribunal is to deal with the proceedings justly including:

- (a) seeking informality and flexibility in proceedings
- (b) ensuring, so far as practicable, that the parties are on an equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take.

74. Parties are currently able to bring their own representation, including legal representation, if they wish, as outlined in rule 9.

75. Individuals who are parties may be accompanied by another person to act as a supporter under rule 10.

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## **Legal Assistance General**

76. The Legal Aid (Scotland) Act 1986 Act (“the 1986 Act”) makes publicly-funded legal assistance available to people to pursue or defend their rights or pay for their defence where they could not otherwise do so. It can be provided for criminal or civil matters, or in relation to children’s hearings and associated court proceedings. The costs are demand led and paid from the Legal Aid Fund (“the Fund”), which is not cash-limited and is administered by the Scottish Legal Aid Board (“the Board”).

77. The 1986 Act defines the different types of legal assistance and sets out the eligibility tests for each. Although “legal aid” is commonly used as an umbrella term, it is only one type of publicly-funded legal assistance. This document therefore uses “legal assistance” as the umbrella term.

## **Advice and Assistance**

78. Advice and Assistance (A&A) is available, subject to a financial eligibility test, on any matter of Scots law for various forms of legal advice and assistance short of representation. It can include advice on whether there is a legal case to take forward, negotiating a settlement, and writing letters on the applicant’s behalf. A&A will not usually cover representation although in some circumstances, the solicitor may grant a type of A&A called Assistance by Way of Representation (ABWOR) in order to represent their client in proceedings.

79. Where it is available for civil matters, this is subject to the usual A&A financial eligibility test but may also be subject to a test of “reasonableness” (as with civil legal aid) and whether the person can participate effectively in proceedings without publicly-funded legal representation.

## **Civil Legal Aid**

80. Civil legal aid can cover circumstances where an applicant’s case is going to court. It can help pay for the costs involved with this, including all legal preparation work, the gathering of any evidence necessary for their case, representation in court and so on. It is assessed and granted by the Board. It is available subject to three tests: whether the applicant is financially eligible; whether they have probable cause (i.e. there is a sound legal basis for the proposed action); and whether it is reasonable in the circumstances to make legal aid available (which can, where appropriate, include consideration of whether attempts have been made to resolve the dispute without litigation). It is available in relation to proceedings on almost any subject in the Sheriff Court, Sheriff Appeal Court, the Court of Session, the Employment Appeals Tribunal, Land Tribunals, Scottish Land Court and appeals to the UK Supreme Court.

81. [The Scottish Legal Aid Board](#) provides further information on publicly funded legal assistance.

## **Provision of publicly funded legal assistance for private rented sector housing Disputes**

### **Current provision**

82. Schedule 2 to the Legal Aid (Scotland) Act 1986 makes civil legal aid available in civil proceedings in the Sheriff court. Housing disputes are generally heard under summary cause procedure (heritable property) in the Sheriff court. The majority of cases involving heritable property (mostly tenant/landlord evictions) are currently undertaken either by law centres or the Civil Legal Assistance Office ("[CLAO](#)"; which is directly funded by the Legal Aid Board).

### **Simple Procedure**

83. Provision has been made for civil legal aid to be available for cases heard in the Sheriff Court under Simple Procedure. The new procedure is being introduced in two phases - the first phase commenced on 28 November 2016 and the second phase, including heritable property (housing cases) will be introduced at a later date in 2017.

### **Upper Tier Tribunal and Appeals**

84. [The Legal Aid \(Scotland\) Act 1986 Amendment Regulations 2016](#) make civil legal aid available for permission to appeal a decision of the First-tier Tribunal on a point of law and subsequently to take the case to the Upper Tribunal.

### **Existing housing tribunals**

85. There is no general provision for publicly funded legal assistance in respect of the existing housing tribunals (the private rented housing panel (prhp) and homeowner housing panel (hohp)) which transferred to the First-tier Tribunal in December 2016. This reflects the continued approach that, at first instance, cases are handled inquisitorially and informally. This has worked well for prhp since it was established in 2006 in handling cases dealing with property repairs, housing conditions and landlord registration. Similarly, there is no need for legal assistance for the hohp in handling cases relating to property factoring and maintenance, registration matters and enforcement of a code of practice.

## **Proposed Provision: Expansion of the First-tier Tribunal from December 2017**

### **Letting Agents**

86. Chapter 5 provides for the procedures in relation to Letting Agent Applications. The new letting agent regime is due to come into force in January 2018. Disputes may include alleged failures to comply with the new letting agent code of practice and registration.

87. The procedures are similar to Homeowner Applications in Part 1; therefore, we propose that these new cases will be heard in the First-tier Tribunal without provision for legal assistance which align with the arrangements for the existing housing tribunals.

88. Chapters 6-10 provide for procedures in relation to PRS housing tenancy disputes expected to transfer mainly from summary cause to simple procedure in 2017 before final transfer to the First-tier Tribunal in December 2017. The case types include a wide range of tenancy related disputes including rent arrears and evictions. We propose to make legal assistance available for procedures in respect of applications relating to landlord registration, and tenancy related applications under the 1984 Act, the 1988 Act, the 2006 Act, and the 2011 regulations.

89. Chapter 11 provides for procedures in respect of Private Residential Tenancy Applications. These new tenancies<sup>1</sup> are due to come into force in December 2017 to coincide with the expansion of the Housing and Property Chamber. Disputes in relation to the new tenancies will be similar to those currently heard in the Sheriff Court as they relate to tenancy disputes including rent arrears and evictions. We propose to make legal assistance available for procedures in respect of private residential tenancy applications under the 2016 Act.

## **Financial implications**

90. When the Government introduced the Bill for the Housing Act, 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. That was based on continuing the same form of legal assistance in the First-tier Tribunal as is currently available for these cases in the Courts. The Government noted if another form of legal assistance were to be provided, such as Assistance by way of Representation, that the cost could be less.

91. We estimate that disputes relating to new tenancies, due to come into force through the implementation of the 2016 Act will be between 845 and 1,100 cases each year. The impact that these cases will have on the Legal Aid Fund will depend on the form of legal assistance that is to be provided in the First-tier Tribunal for private rented housing cases, and on the net increase in total cases being heard (given that cases relating to current tenancies will reduce as the tenancies themselves come to an end and are replaced by the new tenancy). It is estimated that around 195 of these may be eligible for either advice & assistance costs or civil legal aid costs. The cost of this is estimated to range between £24,000 and £80,000 and is likely to fall somewhere in between. The more cases that are eligible for legal aid, the higher the cost will be.

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<sup>1</sup> Private Housing (Tenancies) (Scotland) Act 2016

## Next Steps

92. Responses to this part of the consultation will determine the availability and type of legal assistance that will be provided in the Housing Chamber from December 2017.

93. If legal assistance is to be provided in the First-tier Tribunal then we will draft relevant legal aid amendment regulations, to be accompanied by a Business and Regulatory Impact Assessment subject to further consultation and parliamentary scrutiny around summer 2017 depending on the parliamentary business timetable.

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## Questions on the proposed provision of publicly funded legal assistance.

### Questions on Part Two

**Q.15.** Are you content that there will be no provision for publicly funded legal assistance for procedure in respect of Letting Agent Applications in Chapter 5?

If you are not content, please explain why?

**Q.16.** Do you agree publicly funded legal assistance should be available for parties in respect of applications for Landlord Registration in Chapter 6?

If you agree, do you have a view on the type of legal assistance that should be available?

If you do not agree, please explain why?

**Q.17** Do you agree publicly funded legal assistance should be available for parties in respect of applications under the 1984 Act in Chapter 7? This includes applications for possession.

If you agree, do you have a view on the type of legal assistance that should be available?

If you do not agree, please explain why?



**Q.18.** Do you agree publicly funded legal assistance should be available for parties in respect of applications under the 1988 Act in Chapter 8? This includes applications for possession.

If you agree, do you have a view on the type of legal assistance that should be available?

If you do not agree, please explain why?

**Q.19.** Do you agree publicly funded legal assistance should be available for parties in respect of applications under the 2006 Regulations Act in Chapter 9?

If you agree, do you have a view on the type of legal assistance that should be available?

If you do not agree, please explain why?

**Q.20.** Do you agree publicly funded legal assistance should be available for parties in respect of applications under the 2011 Act in Chapter 10?

If you agree, do you have a view on the type of legal assistance that should be available?

If you do not agree, please explain why?

**Q.21.** Do you agree publicly funded legal assistance should be available for parties in respect of private residential tenancy applications in Chapter 11? This includes applications for an eviction order.

If you agree, do you have a view on the type of legal assistance that should be available?

If you do not agree, please explain why?

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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No.**

**TRIBUNALS AND INQUIRIES**

**The First-tier Tribunal for Scotland Housing and Property  
Chamber (Procedure) Regulations 2017**

*Made* - - - - 2017  
*Laid before the Scottish Parliament* 2017  
*Coming into force* - - 1st December 2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 55(1) and paragraph 4(2) of schedule 9 to 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 have considered appropriate.

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and the Rules set out in the schedule may be cited as the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.

(2) These Regulations come into force on 1st December 2017.

**Application of First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017**

**2.** The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 set out in the schedule of these Regulations apply to proceedings before the First-tier Tribunal for Scotland Housing and Property Chamber when exercising the functions allocated to it by—

- (a) regulation 3(1) of the First-tier Tribunal (Transfer of functions of the Homeowner Housing Committees) Regulations 2016(b);
- (b) regulation 3(1) of the First-tier Tribunal (Transfer of functions of the Homeowner Housing Panel) Regulations 2016(c);
- (c) regulation 3(1) of the First-tier Tribunal (Transfer of functions of the Private Rented Housing Committees) Regulations 2016(d);

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(a) 2014 asp 10.  
(b) .  
(c) .  
(d) .

- (d) regulation 3(1) of the First-tier Tribunal (Transfer of functions of the Private Rented Housing Panel) Regulations 2016<sup>(a)</sup>;
- (e) the Rent (Scotland) Act 1984;
- (f) the Housing (Scotland) Act 1988;
- (g) the Antisocial Behaviour etc. (Scotland) Act 2004;
- (h) the Housing (Scotland) Act 2006;
- (i) the Property Factors (Scotland) Act 2011;
- (j) the Tenancy Deposit Schemes (Scotland) Regulations 2011;
- (k) the Housing (Scotland) Act 2014; or
- (l) the Private Housing (Tenancies) (Scotland) Act 2016.

### **Transitional and saving provisions**

**3.**

### **Revocation**

**4.** The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 are revoked.

Member of the Scottish Government

St Andrew's House,  
Edinburgh  
2017

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<sup>(a)</sup>

## SCHEDULE

### The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

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# PART 1

## Procedure common to all proceedings

### Interpretation

#### 1.—(1) In these Rules—

“adjourn” means, in relation to a hearing, to suspend and continue on a later date;

“application” means an application made to the Tribunal and includes an assured tenancy reference and a regulated tenancy reference and “applicant” is to be construed accordingly;

“case management discussion” includes any resumed discussion;

“chairing member” means the chairing member is the legal member where a hearing is heard by 2 or more members;

“Chamber President” means Chamber President of the First-tier Tribunal;

“electronic communication” has the meaning given to it by section 15(1) of the Electronic Communications Act 2000<sup>(a)</sup> (general interpretation) and “electronic signature” has the same meaning as in section 7 of that Act;

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(a) 2000 c.7.



“First-tier Tribunal” means the First-tier Tribunal for Scotland Housing and Property Chamber;

“hearing” includes any resumed hearing;

“interested party” means a person other than the appellant or respondent on whom the First-tier Tribunal has ordered the proceedings before it to be served;

“lay representative” means a representative of a party who is not a legal representative;

“party” includes, unless the context requires otherwise, the homeowner, the property factor, the tenant, the former tenant, the landlord, the former landlord, the third party applicant, the former residential occupier, the lessor, the lessee, the letting agent and any other person permitted by the First-tier Tribunal to be a party to proceedings;

“postpone” means, in relation to a hearing, to defer to a date later than that set by the First-tier Tribunal;

“the proceedings” means the proceedings in relation to the making of a decision under these Rules;

“representative” means a lay representative or a legal representative of a party;

“the Tribunals Act” means the Tribunals (Scotland) Act 2014; and

“writing” includes electronic communication which has been recorded and is consequently capable of being reproduced; and cognate expressions are to be construed accordingly.

(2) Where terms are used in these Rules, which are defined terms in—

- (a) the Rent (Scotland) Act 1984;
- (b) the Housing (Scotland) Act 1988;
- (c) the Antisocial Behaviour etc. (Scotland) Act 2004;
- (d) the Housing (Scotland) Act 2006;
- (e) the Property Factors (Scotland) Act 2011(a);
- (f) the Tenancy Deposit Schemes (Scotland) Regulations 2011;
- (g) the Housing (Scotland) Act 2014; or
- (h) the Private Housing (Tenancies) (Scotland) Act 2016,

the definitions in those Acts in respect of those terms apply to these Rules as appropriate.

### **The overriding objective**

2.—(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.

(2) Dealing with the proceedings justly includes—

- (a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;
- (b) seeking informality and flexibility in proceedings;
- (c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party’s case without advocating the course they should take;
- (d) using the special expertise of the First-tier Tribunal effectively; and
- (e) avoiding delay, so far as compatible with the proper consideration of the issues.

### **Application of the overriding objective**

3.—(1) The Chamber President and the First-tier Tribunal must seek to give effect to the overriding objective when—

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(a) 2011 asp 8.

- (a) exercising any power under these Rules; and
  - (b) interpreting any rule.
- (2) In particular the Chamber President and the First-tier Tribunal must manage the proceedings in accordance with the overriding objective.
- (3) The parties must assist the Chamber President or the First-tier Tribunal to further the overriding objective.

### **Applications**

4. An application to the First-tier Tribunal must be in writing and may be made using a form obtained from the First-tier Tribunal.

### **Requirements for making an application**

5. In relation to an application—

- (a) it is held to have been made on the date that it is lodged if, on that date, it is lodged in the prescribed manner as set out in rules 39, 44, 45, 46, 47, 53, 58, 61, 65, 66, 67, 71, 72, 73, 74, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95, 96, 97, 98, 100, 103, 106, 107, 108, 109, 110, 111 and 112, as appropriate;
- (b) the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the prescribed manner by assessing whether all mandatory requirements for lodgement have been met; and
- (c) if it is determined that an application is not lodged in the prescribed manner, then the First-tier Tribunal may request further documents, and the application will be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the prescribed manner for lodgement.

### **Service**

6.—(1) Where any formal communication requires to be served upon the parties, it is deemed to have been served on a party if it is served on a person who is acting as the representative of that party.

(2) A member of staff of the Scottish Courts and Tribunals Service may send a formal communication on behalf of the First-tier Tribunal.

### **Signature of documents**

7. A requirement in these Rules for a document to be signed by a person is satisfied, in the case of a document which is transmitted by electronic communication in accordance with these Rules, by electronic signature of the person who is required to sign the document.

### **Notification by the First-tier Tribunal**

8.—(1) Where the First-tier Tribunal receives an application, it must, as soon as practicable, give notice to each party (or any representative)—

- (a) setting out the detail of the application in such manner as the First-tier Tribunal thinks fit; and
  - (b) specifying the day by which any written representations must be made.
- (2) The day specified for the purposes of paragraph (1)(b)—
- (a) must be at least 14 days after the day on which the notice is given; and
  - (b) may, at the request of any party, be changed to such later day as the First-tier Tribunal thinks fit.

(3) The First-tier Tribunal must notify each party of a change mentioned in paragraph (2)(b).

### **Representatives**

9.—(1) A party may be represented in any proceedings by a legal representative or lay representative whose details must be notified to the First-tier Tribunal prior to any hearing.

(2) A party may disclose any document or communicate any information about the proceedings to that party's lay representative or legal representative without contravening any prohibition or restriction on disclosure of the document or information.

(3) Where a document or information is disclosed under paragraph (2), the legal representative or lay representative is subject to any prohibition or restriction on disclosure in the same way that the party is.

(4) Anything permitted or required to be done by a party under these Rules, a practice direction or an order may be done by a lay representative, except signing of an affidavit or precognition.

(5) The First-tier Tribunal may order that a lay representative is not to represent a party if—

- (a) it is of the opinion that the lay representative is an unsuitable person to act as a lay representative (whether generally or in the proceedings concerned); or
- (b) it is satisfied that to do so would be in the interests of the efficient administration of justice.

(6) Where a representative begins to act for a party after the application is made, the representative must immediately notify the First-tier Tribunal and the other party of that fact.

(7) Where a representative ceases to act for a party, the representative or the party must immediately notify the First-tier Tribunal and the other party of that fact, and of details of any new representative (if known).

### **Supporters**

10.—(1) A party who is an individual may be accompanied by another individual to act as a supporter.

(2) A supporter may assist the party by—

- (a) providing moral support;
- (b) helping to manage tribunal documents and other papers;
- (c) taking notes of the proceedings;
- (d) quietly advising on—
  - (i) points of law and procedure;
  - (ii) issues which the party litigant might wish to raise with the tribunal.

(3) A party may show any document or communicate any information about the proceedings to that party's supporter without contravening any prohibition or restriction on disclosure of the document or information.

(4) Where a document or information is disclosed under paragraph (3), the supporter is subject to any prohibition or restriction on disclosure in the same way that the party is.

(5) A supporter may not represent the party.

(6) The First-tier Tribunal may order that a person is not to act as a supporter of a party if—

- (a) it is of the opinion that the supporter is an unsuitable person to act as a supporter (whether generally or in the proceedings concerned); or
- (b) it is satisfied that to do so would be in the interests of the efficient administration of justice.

### **Hearing two or more applications together**

**11.—**(1) The First-tier Tribunal may direct two or more applications to be heard together where they are under consideration by the First-tier Tribunal at the same time and relate to the same—

- (a) property;
- (b) required work;
- (c) property factor;
- (d) letting agent; or
- (e) landlord.

(2) The First-tier Tribunal may require the parties to take any steps necessary to enable two or more applications to be heard together.

### **Amendment to a party's written representations**

**12.—**(1) Subject to rule 14 (amendment raising new issues), a party may amend that party's written representations—

- (a) any time up to 7 working days prior to the date fixed for a hearing; or
- (b) within 7 working days prior to the date fixed for the hearing or during the hearing, with the consent of the First-tier Tribunal and on such conditions, if any, as the First-tier Tribunal thinks fit.

(2) Such amendment must—

- (a) be in writing unless it is made during the hearing, in which case the terms of the amendment may be stated orally in the presence of the other party or parties and noted by the First-tier Tribunal; and
- (b) comply with any requirements in an enactment which would have applied if the amendment had been included in the application.

(3) On receipt of a written amendment, the First-tier Tribunal must intimate the amendment to the other party or parties in writing.

### **Amendment raising new issues**

**13.—**(1) Where the effect of any proposed amendment of the written representations by the party would be to introduce a new issue, such amendment may only be made with the consent of the First-tier Tribunal and on such conditions, if any, as the First-tier Tribunal thinks fit.

(2) Where an application is amended to include a new issue, the other party may make written representations in response to the amendment, or request the opportunity to make oral representations, by a specified date not less than 14 days from the date on which intimation of the amendment is served.

(3) The party mentioned in paragraph (1) may also make further written representations or request the opportunity to make oral representations, by the specified date.

(4) The date by which such representations must be made may, at the request of either party, be changed to such later day as the First-tier Tribunal thinks fit.

(5) The First-tier Tribunal must notify all parties of any change under paragraph (4).

(6) Where written representations are amended to include a new issue and the other party requests further time to comply with any duty under an enactment, then, the First-tier Tribunal must allow such further time as it considers reasonable.

### **Withdrawal of the application**

**14.—**(1) An application may be withdrawn by an applicant at any time—

- (a) orally at a hearing; or

(b) by notifying the First-tier Tribunal and the other parties.

(2) A notice of withdrawal must be in writing and may be made on a form obtained from the First-tier Tribunal.

### **Directions**

**15.—**(1) On its own initiative or on the application of a party, the First-tier Tribunal may give directions to the parties relating to the conduct or progress of the application.

(2) The power to give directions is to be exercised subject to other provision in these Rules.

(3) Directions may be given orally or in writing and must be intimated to every party.

(4) Directions of the First-tier Tribunal may, in particular—

- (a) relate to any matter concerning the preparation for a hearing;
- (b) set time limits for something to be done;
- (c) vary any time limit given in a previous direction;
- (d) provide for—
  - (i) a matter to be dealt with as a preliminary issue;
  - (ii) a party to provide further details of that party's case, or other information which appears to be necessary, in the opinion of the First-tier Tribunal, for the determination of the application;
  - (iii) witnesses to be heard;
  - (iv) the manner in which evidence is to be given;
- (e) require a party to lodge and serve—
  - (i) statements of evidence which will be put forward at the hearing;
  - (ii) a paginated and indexed bundle of all the documents which will be relied on at the hearing;
  - (iii) a skeleton argument which summarises the submissions which will be made at the hearing and cites all the authorities which will be relied on, clearly identifying particular passages to be relied on;
  - (iv) a list of witnesses whom a party wishes to call to give evidence.

(5) When making directions the First-tier Tribunal must take into account the ability of parties to comply with the directions.

### **Case management discussions**

**16.—**(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) A case management discussion is to be held in order that the First-tier Tribunal may—

- (a) discuss the claim and response with the parties;
- (b) clarify any of its concerns;
- (c) give the parties guidance and orders about witnesses, documents and other evidence required for a hearing;
- (d) give the parties an order to arrange a hearing;
- (e) discuss an application to recall a decision.

(3) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

### **Power to determine the proceedings without a hearing**

**17.—**(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
  - (i) having regard to the nature of the issues raised in the proceedings, sufficient evidence is available to enable it to come to a decision; and
  - (ii) to do so will not be contrary to the interests of the parties;
- (b) must make a decision without a hearing where the decision relates to—
  - (i) correcting; or
  - (ii) reviewing,a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

### **Mediation**

**18.** In cases identified by the Chamber President as suitable for mediation, the First-tier Tribunal must—

- (a) bring to the attention of the parties the availability of mediation as an alternative procedure for the resolution of the dispute;
- (b) provide information explaining what mediation involves; and
- (c) if the parties consent to mediation, adjourn or postpone the proceedings to enable the parties to access mediation.

### **Inquiries**

**19.—**(1) The First-tier Tribunal may make such inquiries as it thinks fit for the purpose of exercising its functions.

(2) Inquiries may be made about matters other than those to which the application relates.

(3) Inquiries may include—

- (a) consideration of any timeous written representation made by or on behalf of the parties;
- (b) where an oral hearing takes place, hearing any oral representation made by or on behalf of the parties; and
- (c) consideration of any report instructed by the First-tier Tribunal about any of the matters referred to in the application.

(4) A representation is timeous if it is received—

- (a) by the day specified in the notice given under rule 8(1)(b) (notification by the First-tier Tribunal);
- (b) where a later day is specified in a notice given under rule 8(2)(b) (notification by the First-tier tribunal), by that later day; or
- (c) by such later date if the First-tier Tribunal is satisfied that there is good reason for the delay.

### **Evidence**

**20.—**(1) The First-tier Tribunal may, for the purposes of making inquiries, require any person—

- (a) to attend a hearing of the First-tier Tribunal at such time and place as the First-tier Tribunal may specify for the purposes of giving evidence;
- (b) to give the First-tier Tribunal, by such day as it may specify, such documents or information as it may reasonably require.

(2) Paragraph (1) does not authorise the First-tier Tribunal to require any person to answer any question or to disclose anything which the person would be entitled to refuse to answer or disclose on grounds of confidentiality in civil proceedings in a court in Scotland.

(3) Where the First-tier Tribunal has set time limits for the lodging and serving of written evidence, it must not consider any written evidence which is not lodged or served in accordance with those time limits unless satisfied that there is good reason to do so.

(4) Where a party seeks to rely upon a copy of a document as evidence, the First-tier Tribunal may require the original document to be produced.

#### **Lodging of documents etc.**

**21.—**(1) Except as otherwise provided in these Rules or as specified by the First-tier Tribunal, a party must send to the First-tier Tribunal no later than 7 days prior to any hearing—

- (a) a list of any documents and copies of the documents that the party wishes to rely upon; and
- (b) a list of any witnesses that the party wishes to call to give evidence.

(2) Where a party seeks to rely upon a document not produced in accordance with paragraph (1), the First-tier Tribunal may allow the document to be lodged late if it is satisfied that there is good reason to do so.

(3) In determining whether to allow a document to be lodged late, the First-tier Tribunal will have regard to whether to do so is fair in all the circumstances.

#### **Documents at hearings**

**22.—**(1) Where the application is to be subject to a hearing, the First-tier Tribunal must take all reasonable steps to ensure that there is supplied to each of the parties before the date of the hearing—

- (a) a copy of, or sufficient extracts from, or particulars of, each document relevant to the application which has been received from a party (other than a document which is in the possession of such party or of which that party has previously been supplied with a copy); and
- (b) a copy of each document which embodies results of enquiries made by or for the First-tier Tribunal for the purposes of that application, or which contains relevant information in relation to rents or other tenancy terms previously determined for other houses and which has been prepared for the First-tier Tribunal for the purposes of that application.

(2) At a hearing where—

- (a) a document relevant to the application is not in the possession of a party present at such hearing; and
- (b) such party has not been supplied with a copy of, or relevant extracts from, or particulars of, such document by the First-tier Tribunal in accordance with the provisions of paragraph (1) of this rule, then unless—
  - (i) such party consents to the continuation of the hearing; or
  - (ii) the First-tier Tribunal consider that such party has a sufficient opportunity of dealing with such document without an adjournment of the hearing,

the First-tier Tribunal must not consider such document until after it has adjourned the hearing for a period which it considers will afford such a party a sufficient opportunity of dealing with such document.

(3) Where an application is not to be subject to a hearing, the First-tier Tribunal must supply to each of the parties a copy of, or sufficient extracts from, or particulars of, each such document as is mentioned in paragraph (1)(a) of this rule (other than a document excepted from that paragraph) and a copy of each such document as is mentioned in paragraph (1)(b) of this rule, and it must not reach its decision until it is satisfied that each party has been given a sufficient opportunity of

commenting upon each document of which a copy or from which extracts or of which particulars has or have been so supplied, and upon the other party's case.

### **Hearings**

**23.—**(1) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a hearing (including any adjourned or postponed hearing) and any changes to the date, time and place of a hearing.

(2) The notice period for a hearing must be no less than 10 working days from the date of receipt of the notice, unless the parties consent to a shorter period or there are urgent or exceptional circumstances.

(3) A hearing must be held in public unless the First-tier Tribunal, on its own initiative or on an application by a party, decides that it is necessary to do otherwise to ensure a fair hearing.

(4) The First-tier Tribunal may hold a hearing and receive evidence by telephone, through a video link or by using any other method of communication if the First-tier Tribunal is satisfied that this would not prejudice the administration of justice and that there is no important public interest consideration which requires a hearing in person.

(5) At a hearing—

- (a) a party or a party's representative may conduct the party's case;
- (b) the parties will be heard in such order and, subject to the provisions of these Rules, according to such procedure as the First-tier Tribunal determines; and
- (c) a party may make representations, call witnesses, give evidence on his or her own behalf and cross-examine any witness called by another party.

(6) The First-tier Tribunal may exclude from the hearing a person who is to appear as a witness until such time as that person gives evidence if it considers it is fair in all the circumstances to do so.

(7) The First-tier Tribunal at its discretion may, on its own initiative or on an application by a party, at any time and from time to time, adjourn or postpone a hearing, subject to rule 26 (adjournment or postponement).

### **Duties of chairing member at a hearing**

**24.** The chairing member must take reasonable steps to—

- (a) introduce the members of the First-tier Tribunal;
- (b) explain the purpose of the hearing; and
- (c) ensure that the parties to a hearing—
  - (i) understand; and
  - (ii) can participate in,

the proceedings.

### **Voting for and giving of decision**

**25.—**(1) Where there are two or more members, the decision of the First-tier Tribunal must be made by majority but in the event of a tie, the chairing member has a casting vote.

(2) The decision must be recorded in a document signed by the chairing member.

(3) A statement of reasons must be prepared by the chairing member with the assistance of the other members of the First-tier Tribunal.

(4) Paragraph (3) does not apply where the First-tier Tribunal makes a decision which relates to—

- (a) correcting or reviewing a decision made by the First-tier Tribunal; or



- (b) a preliminary issue dealt with following a direction under rule 15(4)(d)(i) (directions).
- (5) Where the decision of the First-tier Tribunal is not unanimous, the chairing member must give a brief note of the opinion of the minority.
- (6) In the absence or incapacity of the chairing member, the chairing member's functions under this rule may be carried out by another member of the First-tier Tribunal.
- (7) A decision of the First-tier Tribunal with a statement of reasons or note under paragraph (4) must be published.
- (8) A decision on property factor enforcement order must be accompanied by—
  - (a) the property factor enforcement order or proposed property factor enforcement order, if any; and
  - (b) any report which the First-tier Tribunal considered before making the decision.

### **Adjournment or postponement**

- 26.—**(1) Where a party applies for an adjournment or postponement of a hearing, that party must—
- (a) if practicable, notify all other parties of the application for adjournment or postponement;
  - (b) show good reason why an adjournment or postponement is necessary; and
  - (c) produce evidence of any fact or matter relied on in support of the application for adjournment or postponement.
- (2) The First-tier Tribunal may only adjourn or postpone a hearing at the request of a party if satisfied that the application cannot otherwise be justly determined.
- (3) If the reason for such an adjournment or postponement is to allow the party more time to produce evidence, the First-tier Tribunal may only adjourn or postpone the hearing if satisfied that—
- (a) the evidence relates to a matter in dispute;
  - (b) it would be unjust to determine the case without permitting the party to produce the evidence; and
  - (c) where the party has failed to comply with directions for the production of the evidence, the party has provided a satisfactory explanation for that failure.

### **Hearing case in the absence of a party**

**27.** If a party or party's representative does not appear at a hearing, the First-tier Tribunal, on being satisfied that the requirements of rule 23(1) (hearings) regarding the giving of notice of a hearing have been duly complied with, may proceed to deal with the application upon the representations of any party present and all the material before it.

### **Recall**

**28.—**(1) A party may apply to have a decision of the First-tier Tribunal recalled where the First-tier Tribunal made a decision—

- (a) under rule 25 (voting for and giving of decision); or
- (b) to dismiss an application,

because a party (or a party's representative) did not attend the hearing.

(2) An application by a party to have a decision of the First-tier Tribunal recalled must be made in writing to the other party involved in the proceedings within 14 days after the day of the decision.

(3) The party making the application must send a copy of the application referred to in paragraph (2) to the First-tier Tribunal at the same time together with evidence showing that the application was sent to the other party.

(4) The party who has been sent the application to recall may object to the recall by sending a statement setting out the objection to the First-tier Tribunal within 10 days of receiving the application to recall.

(5) The First-tier Tribunal may on cause shown, if in the interests of justice, extend the period of 14 days referred to in paragraph (2).

(6) After considering the application to recall and any objection that may be sent, the First-tier Tribunal may—

- (a) grant the application and recall the decision;
- (b) refuse the application; or
- (c) order the parties to appear at a case management discussion where the First-tier Tribunal will consider whether to recall the decision.

### **Death, insolvency or incapacity of a party**

**29.**—(1) Where a party dies, becomes insolvent, or becomes subject to a legal capacity, while an application is under consideration, a person claiming to represent that party or the deceased party's estate may apply to be a party to the cause.

(2) For the purposes of paragraph (1) a person is insolvent if—

- (a) the person's estate is sequestrated;
- (b) the person has granted a trust deed for creditors; or
- (c) the person is the subject of any other kind of arrangement analogous to those described in sub-paragraphs (a) and (b), anywhere in the world.

(3) The First-tier Tribunal may continue to consider and determine the application despite the death, insolvency or legal incapacity of any party.

### **Absence of a member of the First-tier Tribunal**

**30.** If, at or after the beginning of a hearing, a member of the First-tier Tribunal other than the chairing member is absent, the hearing may be conducted by the chairing member sitting alone or alongside another member and in that event the hearing will be deemed to be properly constituted.

### **Exclusion of persons disrupting proceedings**

**31.**—(1) Without prejudice to any other powers it has, the First-tier Tribunal may exclude from any hearing or part of it any person (including a party, a representative or a supporter)—

- (a) whose conduct has disrupted the hearing or is likely, in the opinion of the First-tier Tribunal, to disrupt the hearing;
- (b) whose presence is likely, in the opinion of the First-tier Tribunal, to make it difficult for any other person to make representations or present evidence necessary for the proper conduct of the hearing.

(2) In deciding whether to exercise the power conferred by paragraph (1) the First-tier Tribunal must, apart from other considerations, have regard to –

- (a) the interests of the parties; and
- (b) in the case of the exclusion of a party or a representative of a party, whether the party will be adequately represented and whether alternative measures could be put in place.

(3) If the First-tier Tribunal decides to exclude a party it must allow the representative of that party sufficient opportunity to consult the party.

### **Prohibition on recording of proceedings by parties**

**32.** The First-tier Tribunal may prohibit photography, or any audio or visual recording of the proceedings, except in so far as is required to make reasonable adjustments to accommodate the disability of a party or a party's representative or supporter.

### **Clerical mistakes and accidental slips or omissions**

**33.** The First-tier Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision, order or any document produced by it, by—

- (a) sending notification of the amended decision or order, or a copy of the amended document to all parties; and
- (b) making any necessary amendment to any information published in relation to the decision, order or document.

### **Application for permission to appeal a decision of the First-tier Tribunal**

**34.** An application for permission under section 46(3)(a) of the Tribunals Act must be made in writing and must—

- (a) identify the decision of the First-tier Tribunal to which it relates;
- (b) identify the alleged error or errors of law in the decision;
- (c) state the ground or grounds of appeal; and
- (d) not be in relation to—
  - (i) a decision arising from a review by the First-tier Tribunal;
  - (ii) section 7 (rateable value and the appropriate day) of the 1984 Act;
  - (iii) section 97 (provisions where tenant shares accommodation with persons other than landlord) of the 1984 Act;
  - (iv) section 85B (time limit for determining application) of the 2004 Act;
  - (v) section 28A (landlord application) of the 2006 Act;
  - (vi) section 64 (Part 1 appeals) of the 2006 Act;
  - (vii) section 66A (appeals in relation to section 52) of the 2006 Act;
  - (viii) paragraph 3 of schedule 5 (warrants for ejection) of the 2006 Act;
  - (ix) section 21 (landlord registration: time limit for determining application) of the 2014 Act;
  - (x) section 33 (time limit for determining application for registration as a letting agent) of the 2014 Act; or
  - (xi) section 29 (First-tier Tribunal's power to set rent) of the 2016 Act.

### **First-tier Tribunal's consideration of application for permission to appeal**

**35.—(1)** On receiving an application for permission to appeal, the First-tier Tribunal must first consider, taking into account the overriding objective in rule 2, whether to review the decision in accordance with rule 36 (review of a decision).

(2) If the First-tier Tribunal decides not to review the decision, or reviews the decision and decides to take no action in relation to the decision, or part of it, the First-tier Tribunal must consider whether to give permission to appeal on each of the grounds of appeal.

(3) The First-tier Tribunal must provide a record of its decision to the parties and any interested party as soon as practicable.

(4) If the First-tier Tribunal refuses permission to appeal, it must send with the notice of its decision—

- (a) a statement of its reasons for such a refusal; and

- (b) notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the method by which, such an application must be made.

### **Review of a decision**

- 36.—**(1) The First-tier Tribunal may only undertake a review of a decision—
- (a) pursuant to rule 35(1) (First-tier Tribunal’s consideration of application for permission to appeal); and
  - (b) if it is satisfied that there was an error of law in the decision.
- (2) The First-tier Tribunal must notify the parties in writing of the outcome of any review.

### **Expenses**

- 37.—**(1) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party or parties to unnecessary or unreasonable expense.
- (2) Where expenses are awarded under paragraph (1) the amount of the expenses awarded under that paragraph must be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party or parties in whose favour the order for expenses is made.

## **PART 2**

### **Procedure in Respect of Homeowner Applications**

#### **Application of Part 2 and interpretation**

- 38.—**(1) This Part of the Rules applies to proceedings before the First-tier Tribunal when exercising the functions transferred to it by—
- (a) regulation 3(1) of the First-tier Tribunal (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016(a);
  - (b) regulation 3(1) of the First-tier Tribunal (Transfer of Functions of the Homeowner Housing Panel) Regulations 2016(b);
- (2) In this Part of the Rules:—
- “the Property Factors Act” means the Property Factors (Scotland) Act 2011(c);
  - “homeowner’s concern” means the homeowner’s reason for considering that the property factor has failed to carry out the property factor’s duties or, as the case may be, to comply with the section 14 duty;
  - “the proceedings” means the proceedings in relation to the making of a decision under section 19(1) (determination by the First-tier Tribunal), 21(1) (variation and revocation of property factor enforcement orders) or 23(1) (effect of failure to comply with property factor enforcement order) of the Property Factors Act (including any preliminary issue);
  - “property factor enforcement order” has the meaning given to it by section 20 of the Property Factors Act; and
  - “the section 14 duty” means the duty imposed by section 14(5) of the Property Factors (Scotland) Act 2011(d).

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(a) .  
 (b) .  
 (c) 2011 asp 8.  
 (d)

### **Application for determination of whether property factor has failed to comply with the Property Factors Act**

**39.**—(1) In addition to the homeowner's reasons as required by section 17(2) of the Property Factors Act the application must state—

- (a) the name and address of the homeowner;
- (b) that the application is made under section 17(1) (application to the First-tier Tribunal) of that Act;
- (c) the name, address and profession of the representative of the homeowner, if any;
- (d) the name of the property factor and, if known, the registered number of the property factor;
- (e) the address of the property factor, or, if known, the name and address and profession of the property factor's representative (if any); and
- (f) the homeowner's concern.

(2) The homeowner must attach to the application a copy of—

- (a) the notification from the homeowner to the property factor for the purposes of section 17(3)(a) of the Property Factors Act;
- (b) any response in writing provided by or on behalf of the property factor to that notification;
- (c) any other correspondence between the homeowner and the property factor relating to the homeowner's concern; and
- (d) any statement of services provided by the property factor to the homeowner as required by the property factor code of conduct.

(3) The application must be signed and dated by the homeowner or by the homeowner's representative.

### **Inspections**

**40.**—(1) An inspection of the land to which the application relates may be carried out at any time during the proceedings.

(2) The First-tier Tribunal may make or commission such further inspections as it considers appropriate to enable it to determine whether the property factor has complied with a property factor enforcement order.

(3) An inspection may be carried out by one or more members of the First-tier Tribunal or by any person authorised by the First-tier Tribunal to carry out such an inspection.

(4) The First-tier Tribunal must give in writing sufficient notice of an inspection to the party or parties.

(5) The parties and the representative of each party are entitled to attend the inspection.

### **Parties to be notified by the First-tier Tribunal**

**41.** The parties are, in relation to an application made under a section of the Property Factors Act, the homeowner and the property factor.

## PART 3

### Procedure in respect of private rented applications

#### Procedure Common to Proceedings in respect of Private Rented Applications

##### Interpretation

**42.—**(1) This Part of the Rules applies to proceedings before the First-tier Tribunal Housing and Property Chamber when exercising the functions allocated to it by—

- (a) regulation 3(1) of the First-tier Tribunal (Transfer of functions of the Private Rented Housing Committees) Regulations 2016<sup>(a)</sup>; or
- (b) regulation 3(1) of the First-tier Tribunal (Transfer of functions of the Private Rented Housing Panel) Regulations 2016<sup>(b)</sup>.

(2) In this Part of the Rules—

“the 2006 Act” means the Housing (Scotland) Act 2006<sup>(c)</sup>;

“the 1988 Act” means the Housing (Scotland) Act 1988<sup>(d)</sup>;

“assured tenancy” and “short assured tenancy” have the meanings assigned to them respectively by sections 12 and 32 of the 1988 Act and “statutory assured tenancy” has the meaning assigned to it by section 16 of the 1988 Act;

“assured tenancy reference to the First-tier Tribunal” means—

- (a) a reference by a landlord or by a tenant under section 17(3) of the 1988 Act of a notice which has been served under section 17(2) of that Act (a notice proposing terms of a statutory assured tenancy and, if appropriate, an adjustment of the rent to take account of the proposed terms);
- (b) a reference by a tenant under section 24(3) of the 1988 Act of a notice which has been served under section 24(1) of that Act (notice proposing an increase in rent under an assured tenancy);
- (c) a reference by a tenant under section 25A(4)(a) of the 1988 Act of a notice which has been served on them under section 25A(2) of that Act (notice proposing a new rent to take account of any sums payable by the tenant to the landlord in respect of council tax);
- (d) an application by a tenant under section 34(1) of the 1988 Act (application for a determination of the rent which the landlord might reasonably be expected to obtain under a short assured tenancy);

“dwelling house” has the meaning given to it by section (17)(7) of the Rent (Scotland) Act 1984<sup>(e)</sup>;

“the landlord’s right of entry” means the landlord’s right of entry to the house concerned under section 181(4) of the 2006 Act; and

“Part VII contract” means a contract within the meaning of section 63(7) of the Rent (Scotland) Act 1984 which has been referred by a party to the First-tier Tribunal under section 65 or 68 of that Act;

“proceedings” means the proceedings in relation to the making of a decision under section 23(1), 24(1), 25(1) or 26(1) of, or paragraph 7(2) or (3) of schedule 2 of, the 2006 Act (including any preliminary issue);

“regulated tenancy reference” means a matter which is referred by a rent officer to the First-tier Tribunal under paragraph 7 or 12 of schedule 5 of the 1984 Act or an application for a

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(a) .  
(b) .  
(c) 2006 asp 1.  
(d) 1988 c.43.  
(e) 1984 c.58.

certificate of fair rent which is referred by a rent officer to the First-tier Tribunal under paragraph 2 or 6 of schedule 6 of the 1984 Act or a Part VII contract; and

“repairing standard enforcement order” means an order made under section 24 of the 2006 Act.

## CHAPTER 1

### Procedure in respect of Repairing Standard Applications

#### Interpretation

**43.** In this Chapter of the Rules—

“the landlord’s duty” means the duty imposed by section 14(1) of the Housing (Scotland) Act 2006.

#### Application to contract out of the repairing standard

**44.** Where a landlord or tenant makes an application under section 18(1) (contracting out with consent of First-tier Tribunal) of the 2006 Act, the application—

- (a) must state—
  - (i) the name, address and registration number (if any) of the landlord;
  - (ii) the name, address and profession of any representative of the landlord;
  - (iii) the name and address of the tenant;
  - (iv) the name, address and profession of any representative of the tenant;
- (b) must be accompanied by—
  - (i) a copy of the tenancy agreement;
  - (ii) a copy of the consent given by the other party under the tenancy as required under section 18(2)(a) of the 2006 Act; and
- (c) must be signed and dated by the landlord or tenant or a representative of the landlord or tenant.

#### Application for determination of whether the landlord has failed to comply with the repairing standard

**45.—(1)** Where a tenant makes an application under section 22(1) of the Act—

- (a) in addition to the tenant’s reasons as required by section 22(2) of the Act (reasons for considering that the landlord has failed to comply with the landlord’s duty), the application must state—
  - (i) the name and address of the tenant;
  - (ii) that the application is made under that section;
  - (iii) the name, address, and profession of any representative of the tenant;
  - (iv) the name of the landlord;
  - (v) the address of the landlord or the name, address and profession, if known, of any representative of the landlord;
  - (vi) the landlord’s registration number, if known;
  - (vii) the nature of the work requiring to be done;
  - (viii) that the landlord has been notified of the work;
- (b) the application must be accompanied by—
  - (i) the lease or tenancy agreement, or if these are not available as much information about the tenancy as the applicant can give;

- (ii) the notification referred to in paragraph (1)(a)(viii) and any subsequent correspondence relating to that notification; and
  - (c) the application must be signed and dated by the tenant or by a representative of the tenant.
- (2) Where a third party applicant makes an application under section 22(1A) of the Act—
- (a) in addition to the third party applicant's reasons as required by section 22(2) of the Act, the application must state—
    - (i) the name and address of the third party applicant;
    - (ii) that the application is made under that section;
    - (iii) the name and address of the tenant;
    - (iv) the name, address and profession, if known, of any representative of the tenant;
    - (v) whether or not the tenant wants to be a party to the proceedings;
    - (vi) the name of the landlord;
    - (vii) the address of the landlord, or the name, address and profession, if known, of any representative of the landlord;
    - (viii) the landlord's registration number, if known;
    - (ix) the nature of the work requiring to be done;
    - (x) that the landlord has been notified of the work. and
  - (b) the application must be accompanied by—
    - (i) the lease or tenancy agreement, or if these are not available as much information about the tenancy as the applicant can give; and
    - (ii) the notification referred to in paragraph (2)(a)(x) and any subsequent correspondence relating to that notification.
  - (c) the application must be signed and dated by the third party applicant or by a representative of the third party applicant.
- (3) Where a property fails to meet the repairing standard in more than one respect, the applicant may raise multiple issues relating to the repairing standard in one application.

**Application to order a person to cease obstructing a person from complying with the repairing standard**

**46.** Where a person who is prevented or obstructed from doing anything which he or she is required, authorised or entitled to do under Part 1 of the 2006 Act ("the obstructed person") by another person ("the obstructing person") makes an application under section 57(2) (obstructions etc.) of the 2006 Act, the application must—

- (a) state—
  - (i) the name and address of the obstructed person;
  - (ii) the name, address and profession of any representative of the obstructed person; and
  - (iii) the name and address of the obstructing person;
  - (iv) the details of the actions being obstructed and the nature of the obstruction;
  - (v) the details of actions which the obstructed person is required, authorised or entitled to do; and
- (b) be signed and dated by the obstructed person or a representative of the obstructed person.

**Application to appeal against a decision of the landlord**

**47.—(1)** Where a tenant makes an application under section 64(6) (Part 1 appeals) of the 2006 Act, the application must—

- (a) state—



- (i) the name and address of the tenant;
- (ii) the name, address and profession of any representative of the tenant;
- (iii) the name, address and registration number (if any) of the landlord;
- (iv) the details of the landlord's refusal where not in writing;
- (v) the details of the works which the tenant has requested the landlord to carry out; and
- (b) be signed and dated by the tenant or a representative of the tenant.

#### **Parties to be notified by the First-tier Tribunal**

**48.** The parties are, in relation to an application—

- (a) under section 18(1) of the 2006 Act, the landlord and the tenant; and
- (b) under section 57(2) of the 2006 Act, the obstructed person and the obstructing person.

#### **Need for additional work**

**49.** Where further relevant issues come to light in the course of investigation by the First-tier Tribunal, the tenant or third party applicant may make a further application in respect of those issues, but may not do so until that person has notified the landlord that further work requires to be done for the purposes of compliance with the landlord's duty.

#### **Procedure for further applications**

**50.—(1)** Any application under rule 49 (need for additional work) must provide the information set out in rule 45(1) or, as the case may be, rule 45(2), and must follow the same procedure as the original application, except that any time scales applicable may be shortened with the consent of the parties.

(2) If the members of the First-tier Tribunal dealing with the original application are satisfied that it is expedient that the further application be made by way of amendment to the original application, they may allow such an amendment.

(3) The First-tier Tribunal must give suitable directions to the parties to ensure that the amended application is properly and fairly considered.

#### **Inspections**

**51.—(1)** An inspection of the property may be carried out before or during the hearing or after an adjournment of the hearing, or at such stage in relation to consideration of the written representations as the First-tier Tribunal determines.

(2) The First-tier Tribunal may make or commission such further inspections as it considers appropriate to enable it to determine whether or not the work required by a repairing standard enforcement order has been completed adequately, or to decide whether to grant a certificate under section 60 of the Act in relation to the work required by any such order.

(3) An inspection may be carried out by the First-tier Tribunal, a member of the First-tier Tribunal, or any person authorised to do so by the First-tier Tribunal or the Chamber President.

(4) The First-tier Tribunal must give sufficient written notice of an inspection to the party or parties.

(5) The parties and the representative of each party are entitled to attend the inspection.

#### **Parties to be notified by the First-tier Tribunal**

**52.** The parties are, in relation to an application under the 2006 Act, the tenant, the landlord, third party applicants, the obstructed person and the obstructing person.

## CHAPTER 2

### Procedure in respect of Landlord applications to the First-tier Tribunal

#### **Application for assistance to exercise the landlord's right of entry**

**53.** Where a landlord makes an application under section 28A(1) of the 2006 Act, the application must—

- (a) state—
  - (i) the name and address of the landlord;
  - (ii) that the application is made under that section;
  - (iii) the address of the house in respect of which the application is made;
  - (iv) the name, address and profession of any representative appointed by the landlord;
  - (v) a telephone number to enable contact to be made with the landlord or any representative appointed by the landlord and any email address which may be used for such contact;
  - (vi) the landlord registration number of the landlord or that an application for registration has been made in accordance with section 83 of the Antisocial Behaviour etc. (Scotland) Act 2004 and has not been determined;
  - (vii) the name, telephone number (if known), and email address (if known) of the tenant;
  - (viii) that the tenant has been notified in writing that the landlord wishes to exercise the landlord's right of entry;
  - (ix) that entry to the house is sought for the purpose of paragraph (a) of section 181(4) of the Act or of paragraph (b) of that section or of both;
  - (x) whether or not the landlord has, within the 12 months prior to the date of making of the application, made another application under section 28A of the Act in respect of the same house;
  - (xi) the name of any person the landlord intends to authorise to enter the house;
- (b) be accompanied by a copy of—
  - (i) the lease or the tenancy agreement or, if these are not available, as much information about the tenancy as the landlord can give;
  - (ii) the notification referred to in paragraph (a)(viii) and any subsequent correspondence relating to that notification; and
- (c) be signed and dated by the landlord or by any representative appointed by the landlord.

#### **Rejection of applications**

**54.—(1)** The First-tier Tribunal must reject an application if—

- (a) the First-tier Tribunal considers that the application is frivolous or vexatious;
- (b) the dispute to which the application relates has been resolved or the landlord has been able to enter the house for the purpose specified in the application;
- (c) the First-tier Tribunal has good reason to believe that it would not be appropriate to assist either the landlord or any person the landlord intends to authorise to enter the house, or both, to gain entry to the house;
- (d) the First-tier Tribunal considers that the application is being made for a purpose other than a purpose specified in section 181(4) of the Act; or
- (e) the landlord has previously made an identical or substantially similar application in relation to the same house and in the First-tier Tribunal's opinion there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(2) Where the First-tier Tribunal makes a decision under section 28A(3) of the Act to reject an application the notification to the landlord under that section must state—

- (a) the name of the tenant and the address of the house;
- (b) the reason for the decision; and
- (c) that in terms of section 28A(8) of the Act the decision is final.

#### **Person authorised to enter**

**55.** If the First-tier Tribunal does not consider the person the landlord intends to authorise to enter the house to be a suitable person, it may allow the landlord to amend the application in this regard.

#### **Decision to assist**

**56.** Where the First-tier Tribunal decides to assist the landlord under subsection (3) of section 28A of the Act, the notice sent to the landlord and the tenant under subsection (5) of that section must, in addition to the information required under that subsection, state—

- (a) the name and address of the landlord;
- (b) the name and address of the landlord's representative, if any;
- (c) the name of the tenant and the address of the house;
- (d) the name of any person the landlord intends to authorise to enter the house;
- (e) whether the landlord is seeking entry to the house for the purpose of—
  - (i) viewing its state and condition for the purpose of determining whether the house meets the repairing standard;
  - (ii) carrying out any work necessary to comply with the duty in section 14(1)(b) of the Act; or
  - (iii) both;
- (f) that if the tenant (without reasonable excuse) fails or refuses, within a reasonable time, to—
  - (i) respond to the First-tier Tribunal, or
  - (ii) agree a suitable date and time (or dates and times) for the landlord to exercise the landlord's right of entry,

the First-tier Tribunal may fix a date and time (or dates and times) for the landlord to exercise the landlord's right of entry.

#### **Stopping assistance**

**57.** Where the First-tier Tribunal makes a decision to stop assisting the landlord under section 28A(7) or section 28C(9) of the Act the First-tier Tribunal must notify the landlord and the tenant and that notice must state—

- (a) the name and address of the landlord;
- (b) the name and address of the landlord's representative, if any;
- (c) the name of the person the landlord intended to authorise to enter the house;
- (d) the name of the tenant and the address of the house;
- (e) the reason for the decision; and
- (f) that in terms of section 28A(8) of the Act the decision to stop assisting the landlord is final.

## CHAPTER 3

### Procedure in respect of Assured Tenancy References to the First-tier Tribunal

#### **Assured tenancy references to the First-tier Tribunal**

**58.** Where a landlord or a tenant makes an assured tenancy reference, the reference must—

- (a) state—
  - (i) the name, address and registration number (if any) of the landlord;
  - (ii) the name and address of the tenant;
  - (iii) the name, address and profession of any representative of the tenant or landlord;
- (b) be accompanied by—
  - (i) a copy of the written terms of the tenancy;
  - (ii) the notice comprising an adjustment of the rent (if any); and
- (c) be signed and dated by the tenant or landlord or a representative of the tenant or landlord.

#### **Inspection of house**

**59.**—(1) The First-tier Tribunal may on its own motion and must at the request of one of the parties (subject in either case to any necessary consent being obtained) inspect the house which is the subject of the assured tenancy reference.

(2) An inspection may be made before, during or after the close of the hearing, or at such stage in relation to the consideration of the representations in writing as the First-tier Tribunal determines.

(3) The First-tier Tribunal must give in writing sufficient notice of an inspection to the party or parties and must allow each party and their representatives to attend any such inspection.

(4) Where an inspection is made after the close of a hearing, the First-tier Tribunal may, if it considers that it is expedient to do so on account of a matter arising from the inspection, re-open the hearing; and if the hearing is to be re-opened, rule 23(1) (hearings) applies as it applied to the original hearing, save in so far as its requirements may be dispensed with or relaxed with the consent of the parties.

#### **Parties to be notified by the First-tier Tribunal**

**60.** The parties are, in relation to an assured tenancy reference, the tenant and the landlord.

## CHAPTER 4

### Procedure in regulated tenancy references

#### **Regulated tenancy references to the First-tier Tribunal**

**61.** Where the rent officer makes a regulated tenancy reference, it must—

- (a) state the name, address and registration number (if any) of the tenant or landlord;
- (b) be accompanied by a copy of the objection made by the tenant or landlord; and
- (c) be signed and dated by the rent officer.

#### **Inspection of dwellinghouse**

**62.**—(1) The First-tier Tribunal may on its own motion and must at the request of one of the parties (subject in either case to any necessary consent being obtained) inspect the dwellinghouse which is the subject of the regulated tenancy reference.

(2) An inspection may be made before, during or after the close of the hearing, or at such stage in relation to the consideration of the representations in writing as the First-tier Tribunal determines.

(3) The First-tier Tribunal must give in writing sufficient notice of an inspection to the party or parties and must allow each party and their representative to attend any such inspection.

(4) Where an inspection is made after the close of a hearing the First-tier Tribunal may, if it considers that it is expedient to do so on account of any matter arising from the inspection, re-open the hearing; and if the hearing is to be re-opened rule 23(1) (hearings) applies as it applied to the original hearing, save in so far as its requirements may be dispensed with or relaxed with the consent of the parties.

### **Parties to be notified by the First-tier Tribunal**

**63.** The parties are, in relation to a regulated tenancy reference, the rent officer, the landlord and the tenant.

## **CHAPTER 5**

### **Procedure in respect of Letting Agent Applications**

#### **Interpretation**

**64.** In this Chapter of these Rules, “the 2014 Act” means the Housing (Scotland) Act 2014(a).

#### **Application for extension of time limit to determine application for registration as a letting agent**

**65.** Where the Scottish Ministers make an application under section 33(3) (time limit for determining application) of the 2014 Act, the application must—

- (a) state—
  - (i) the address of the Scottish Ministers;
  - (ii) the name, address and profession of any representative of the Scottish Ministers;
  - (iii) the name, address and registration number (if any) of the person applying for registration as a letting agent;
  - (iv) the reasons why an extension is sought;
  - (v) the date of receipt by the Scottish Ministers of the application under section 32 of the 2014 Act; and
- (b) be signed and dated by the Scottish Ministers or a representative of the Scottish Ministers.

#### **Application to appeal decision by the Scottish Ministers**

**66.** Where a person makes an application under section 41(1) (appeals) of the 2014 Act, the application must—

- (a) state—
  - (i) the name, address and letting agent registration number (if any) of the person;
  - (ii) the name, address and profession of any representative of the person;
  - (iii) the address of the Scottish Ministers;
  - (iv) the decision of the Scottish Ministers and the date the person was notified of that decision;

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(a) 2014 asp 14.

- (v) the reasons why a person is appealing the decision of the Scottish Ministers; and
- (b) be signed and dated by the person or a representative of the person.

#### **Application to enforce letting agent code of practice**

**67.** Where a tenant or landlord makes, or the Scottish Ministers make, an application under section 48(1) (applications to First-tier Tribunal to enforce code of practice) of the 2014 Act, the application must—

- (a) state, in addition to the applicant's reasons as required under section 48(3) of the 2014 Act—
  - (i) the name and address of the tenant, landlord or the Scottish Ministers;
  - (ii) the name, address and profession of any representative of the tenant, landlord or the Scottish Ministers;
  - (iii) the name, address and letting agent registration number (if any) of the letting agent;
  - (iv) the name, address and profession, if known, of any representative of the letting agent;
  - (v) information as to any loss suffered by the applicant as a result of the failure to comply;
  - (vi) the reasons for considering that the letting agent has failed to comply with the code of practice;
- (b) be accompanied by a copy of the notification to the letting agent as required under section 48(4) of the 2014 Act; and
- (c) be signed and dated by the applicant or a representative of the applicant.

#### **Parties to be notified by the First-tier Tribunal**

**68.** The parties are, in relation to an application—

- (a) under section 33(3) of the 2014 Act, the Scottish Ministers and the person applying for registration as a letting agent;
- (b) under section 41(1) of the 2014 Act, either—
  - (i) the registered letting agent who has been removed from the register or had an application for registration refused; or
  - (ii) the person whose application for registration as a letting agent is refused, and the Scottish Ministers; and
- (c) under section 48(1) of the 2014 Act, the tenant, landlord (if a party to the proceedings) or the Scottish Ministers and the letting agent.

#### **Letting agent enforcement orders**

**69.—(1)** Where the First-tier Tribunal varies or revokes a letting agent enforcement order under section 49 of the 2014 Act, both parties will be notified in writing.

**(2)** Where the First-tier Tribunal notifies the Scottish Ministers under section 50(2) of the 2014 Act that a letting agent has failed to comply with a letting agent enforcement order, both parties will receive a copy of that notification.

## **CHAPTER 6**

### **Procedure in respect of Landlord Registration Applications**

#### **Interpretation**

**70.** In this Chapter of these Rules—

“the 2004 Act” means the Antisocial behaviour etc. (Scotland) Act 2004; and

“relevant person” has the meaning given by section 83(8) of the 2004 Act<sup>(a)</sup>.

**Application for an extension of time limit to determine application for registration as a landlord**

**71.** Where the local authority makes an application under section 85B(3)<sup>(b)</sup> (time limit for determining application) of the 2004 Act, the application must—

- (a) state—
  - (i) the name and address of the local authority;
  - (ii) the name, address and profession of any representative of the local authority;
  - (iii) the name, address and registration number (if any) of the person applying for landlord registration;
  - (iv) the date of receipt of the application under section 83 of the 2004 Act; and
- (b) be signed and dated by the local authority or a representative of the local authority.

**Application to appeal against refusal to register or removal from register**

**72.** Where a person makes an application under section 92(2) (appeal against refusal to register or removal from register) of the 2004 Act, the application must—

- (a) state—
  - (i) the name, address and registration number (if any) of the person;
  - (ii) the name, address and profession of any representative of the person;
  - (iii) the name and address of the local authority;
  - (iv) the decision of the local authority and the date the person was notified of that decision;
  - (v) the reasons why a person is appealing the decision of the local authority; and
- (b) be signed and dated by the person or a representative of the person.

**Application to appeal against a decision of the local authority to serve a notice that no rent is payable**

**73.** Where a relevant person on whom a notice under section 94 (circumstances in which no rent to be payable) of the 2004 Act is served makes an application under section 97(1) (appeals) of the 2004 Act, the application must—

- (a) state—
  - (i) the name and address of the person;
  - (ii) the name, address and profession of any representative of the person;
  - (iii) the name and address of the local authority;
- (b) be accompanied by a copy of the notification to the person who has the use as a dwelling of the house to which the notice relates as required under section 97(4) of the 2004 Act; and
- (c) be signed and dated by the relevant person or a representative of the relevant person.

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(a) A “relevant person” means a person who is not a local authority or a registered social landlord.

(b) Section 85B(3) is not yet in force.

### **Application to revoke a notice that no rent is payable**

**74.** Where a local authority makes a decision refusing to revoke a notice under section 95(2) (notices under section 94: revocation) of the 2004 Act and a person having an interest makes an application under section 97(2) (appeals) of the 2004 Act, the application must—

- (a) state—
  - (i) the name and address of the person;
  - (ii) the name, address and profession of any representative of the person;
  - (iii) the name and address of the local authority;
- (b) be accompanied by a copy of the notification to the person who has the use as a dwelling of the house to which the notice relates as required under section 97(4) of the 2004 Act; and
- (c) be signed and dated by the relevant person or a representative of the relevant person.

### **Parties to be notified by the First-tier Tribunal**

**75.** The parties are, in relation to an application—

- (a) under section 85B(3) of the 2004 Act, the local authority and the relevant person;
- (b) under section 92(2) of the 2004 Act, the person whose application for registration is refused or who is removed from the register and the local authority;
- (c) under section 97(1) of the 2004 Act, the person who has been served with a notice under section 94 of the Act and the local authority;
- (d) under section 97(2) of the 2004 Act, a person whose application for the revocation of a notice under section 94 of the 2004 Act has been refused and the local authority.

## **CHAPTER 7**

### **Procedure in respect of applications under the 1984 Act**

#### **Interpretation**

**76.** In this Chapter of these Rules, “the 1984 Act” means the Rent (Scotland) Act 1984(a).

### **Application to determine the statutory tenant after the death of a protected tenant**

**77.** Where a person makes an application under section 3(1)(b) and Schedule 1, paragraph 3 or 7 (statutory tenants and tenancies), of the 1984 Act, the application must—

- (a) state—
  - (i) the name and address of the person;
  - (ii) the name, address and profession of any representative of the person;
  - (iii) the name and address and registration number (if any) of the landlord;
  - (iv) the name and date of death of the deceased former tenant;
  - (v) the names and addresses of all persons related to the deceased former tenant who lived in the house for at least 6 months prior to the death of the deceased former tenant;
- (b) be accompanied by—
  - (i) a copy of the protected tenancy agreement (if any);
  - (ii) a copy of the notice of termination (if any); and

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(a) 1984 c.7.



- (c) be signed and dated by the person or a representative of the person.

**Application for the apportionment of the rateable value in relation to a protected tenancy**

**78.** Where an owner makes an application under section 7(2) (rateable value and the appropriate day) of the 1984 Act, the application must—

- (a) state—
  - (i) the name and address of the owner;
  - (ii) the name, address and profession of any representative of the owner;
  - (iii) the name and address of the local authority;
- (b) be accompanied by representations relating to the apportionment of the rateable value; and
- (c) be signed and dated by the landlord or a representative of the owner.

**Application for possession**

**79.** Where a landlord makes an application under section 11 (grounds for possession of certain dwelling-houses) of the 1984 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 any representative of the landlord;
  - (iii) the name and address of the tenant;
  - (iv) the circumstances which apply as specified in any Case in Part I or II of Schedule 2 to the 1984 Act;
- (b) be accompanied by—
  - (i) a copy of the notice to quit to the tenant;
  - (ii) a copy of the notice given to the local authority as required under section 12A(1) of the 1984 Act;
  - (iii) a copy of the notice of proceedings;
  - (iv) evidence that suitable alternative accommodation is available; and
- (c) be signed and dated by the landlord or a representative of the landlord.

**Application for compensation for misrepresentation or concealment by landlord**

**80.** Where a former tenant makes an application under section 21 (compensation for misrepresentation or concealment in Cases 7 and 8) of the 1984 Act, the application must—

- (a) state—
  - (i) the name and address of the former tenant;
  - (ii) the name, address and profession of any representative of the former tenant;
  - (iii) the name, address and registration number (if any) of the landlord;
- (b) be accompanied by—
  - (i) evidence of misrepresentation on the part of the landlord;
  - (ii) a copy of the order for possession; and
- (c) be signed and dated by the former tenant or a representative of the former tenant.

**Application to evict an occupier upon termination of a tenancy**

**81.** Where an owner makes an application under section 23 (prohibition of eviction without due process of law) of the 1984 Act, the application must—

- (a) state—
  - (i) the name, address and registration number (if any) of the owner;
  - (ii) the name, address and profession of any representative of the owner;
  - (iii) the name and address of the occupier;
- (b) be accompanied by—
  - (i) a copy of the tenancy agreement;
  - (ii) evidence that —
    - (aa) the tenancy has ended; or
    - (bb) the tenant has died; and
- (c) be signed and dated by the owner or a representative of the owner.

#### **Application to adjust recoverable rent**

**82.** Where a landlord or tenant makes an application under section 31(2) (adjustment, with respect to services and furniture, of recoverable rent for statutory periods before registration) of the 1984 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 any representative of the landlord;
  - (iii) the name and address of the tenant;
  - (iv) the name, address and profession of any representative of the tenant;
- (b) be accompanied by a copy of the tenancy agreement; and
- (c) be signed and dated by the landlord or tenant or a representative of the landlord or tenant.

#### **Application to amend a rent increase notice**

**83.** Where a landlord makes an application under section 32(4) (notices of increase) of the 1984 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 any representative of the landlord;
  - (iii) the name and address of the tenant;
  - (iv) the reasons for seeking amendment to the notice of increase;
- (b) be accompanied by a copy of the rent increase notice; and
- (c) be signed and dated by the landlord or a representative of the landlord.

#### **Application to rectify a rent book after determination of recoverable rent**

**84.** Where a tenant makes an application under section 39 (rectification of rent books in light of determination of recoverable rent) of the 1984 Act, the application must—

- (a) state—
  - (i) the name and address of the tenant;
  - (ii) the name, address and profession of any representative of the tenant;
  - (iii) the name, address and registration number (if any) of the landlord;
- (b) be accompanied by—
  - (i) a copy of the record of determination of recoverable rent;
  - (ii) a copy of the rent book or similar document; and

- (c) be signed and dated by the tenant or a representative of the tenant.

**Application to determine the rent limit**

**85.** Where a landlord or tenant makes an application under section 60 (supplemental to sections 55 to 59) of the 1984 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 any representative of the landlord;
  - (iii) the name and address of the tenant;
  - (iv) the name, address and profession of any representative of the tenant;
- (b) be accompanied by—
  - (i) copies of the relevant tenancy or lease agreements;
  - (ii) copies of the relevant rent adjustment notices; and
- (c) be signed and dated by the landlord or tenant or a representative of the landlord or tenant.

**Application for apportionment of the rateable value in relation to a Part VII contract**

**86.** Where a lessor or lessee makes an application under section 64(6) (dwelling-houses to which Part VII applies) of the 1984 Act, the application must—

- (a) state—
  - (i) the name, address and registration number (if any) of the lessor;
  - (ii) the name, address and profession of any representative of the lessor;
  - (iii) the name and address of the lessee;
  - (iv) the name, address and profession of any representative of the lessee;
- (b) be accompanied by representations relating to the apportionment of the rateable value; and
- (c) be signed and dated by the lessor or lessee or a representative of the lessor or lessee.

**Application to reduce the period of a notice to quit**

**87.** Where a lessor makes an application under section 75 (power of First-tier Tribunal, in action for possession, to reduce period of notice to quit) of the 1984 Act, the application must—

- (a) state—
  - (i) the name, address and registration number (if any) of the lessor;
  - (ii) the name, address and profession of any representative of the lessor;
  - (iii) the name and address of the lessee;
  - (iv) the paragraph of section 74(2) of the 1984 Act relating to the lessees default;
- (b) be accompanied by evidence of the lessees default; and
- (c) be signed and dated by the lessor or a representative of the lessor.

**Application to postpone the date of possession in relation to Part VII contracts**

**88.** Where a lessor makes an application under section 76 (notice to quit relating to later Part VII contracts) of the 1984 Act, the application must—

- (a) state—
  - (i) the name, address and registration number (if any) of the lessor;
  - (ii) the name, address and profession of any representative of the lessor;

- (iii) the name and address of the lessee;
- (iv) the reasons for the postponement of the date of possession; and
- (b) be signed and dated by the lessor or a representative of the lessee.

#### **Application to recover unlawful premiums and loans**

**89.** Where a person makes an application under section 88 (recovery of premiums and loans unlawfully required or received) of the 1984 Act, the application must—

- (a) state—
  - (i) the name and address of the person;
  - (ii) the name, address and profession of any representative of the person;
  - (iii) the name, address and registration number (if any) of the landlord;
- (b) be accompanied by—
  - (i) a copy of the premium or loan agreement (if any);
  - (ii) evidence of an unlawful payment to be recovered; and
- (c) be signed and dated by the person or a representative of the person.

#### **Application to modify a tenant's right to shared accommodation**

**90.** Where a landlord makes an application under section 97(8) (provisions where tenant shares accommodation with persons other than landlord) of the 1984 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 any representative of the landlord;
  - (iii) the name and address of the tenant;
  - (iv) the details of the termination of rights or modification proposed;
- (b) be accompanied by a copy of the occupancy agreement; and
- (c) be signed and dated by the landlord or a representative of the landlord.

#### **Application to alter the amount of rent where the right to shared accommodation is modified**

**91.** Where a landlord or tenant makes an application under section 97(9) (provisions where tenant shares accommodation with persons other than landlord) of the 1984 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 any representative of the landlord;
  - (iii) the name and address of the tenant;
  - (iv) the name, address and profession of any representative of the tenant;
  - (v) the details of the change in circumstances or increase in rent; and
- (b) be signed and dated by the landlord or tenant or a representative of the landlord or tenant.

#### **Application to determine the application of the 1984 Act**

**92.** Where a landlord or tenant makes an application under section 102(A1) (jurisdiction) of the 1984 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 any representative of the landlord;
- (iii) the name and address of the tenant;
- (iv) the name, address and profession of any representative of the tenant;
- (v) the details of the question regarding the application of the 1984 Act; and
- (b) be signed and dated by the landlord or tenant or a representative of the landlord or tenant.

#### **Parties to be notified by the First-tier Tribunal**

**93.** The parties are in relation to an application—

- (a) under section 3(1)(b) and Schedule 1, paragraph 3 or 7 of the 1984 Act, the person who meets the requirements in paragraph 3 or 7, any other person who meets the requirements in paragraph 3 or 7 and the landlord;
- (b) under section 7(2) of the 1984 Act, the owner and the local authority;
- (c) under section 11, 23, 31(2), 32(4), 39, 60, 97(8) or (9) and 102(A1) of the 1984 Act, the landlord and the tenant;
- (d) under section 21 of the 1984 Act, the former tenant and the landlord;
- (e) under section 64(6), 75 or 76 of the 1984 Act, the lessor and lessee;
- (f) under section 88 of the 1984 Act, the person who has paid a premium and the landlord;
- (g) under section 92(2) of the 1984 Act, the person whose application for registration is refused or who is removed from the register and the local authority.

## **CHAPTER 8**

### **Procedure in respect of applications under the 1988 Act**

#### **Application for order for possession**

**94.** Where a landlord makes an application under section 18(1) (orders for possession) 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 any representative of the landlord;
  - (iii) the name and address of the tenant;
  - (iv) the possession grounds which apply as set out in Schedule 5 of the 1988 Act;
- (b) be accompanied by—
  - (i) a copy of the notification to the tenant as required under section 19(1)(a) of the 1988 Act;
  - (ii) a copy of the notice to quit served by the landlord on the tenant;
  - (iii) evidence tending to show that the possession ground or grounds has been met; and
- (c) be signed and dated by the landlord or a representative of the landlord.

#### **Application to determine removal expenses**

**95.** Where a landlord and tenant cannot agree the amount payable by the landlord to the tenant under section 22(1) of the 1988 Act, either the landlord or the tenant may make an application under section 22(2) (payment of removal expenses in certain cases) of the 1988 Act and the application must—

- (a) state—
  - (i) the name, address and registration number (if any) of the landlord;

- (ii) the name, address and profession of any representative of the landlord;
  - (iii) the name and address of the tenant;
  - (iv) the name, address and profession of any representative of the tenant;
  - (v) the details of the tenant's claim for expenses, reasons for disagreement and proposals for settlement; and
- (b) be signed and dated by the landlord or tenant or a representative of the landlord or tenant.

**Application to provide written tenancy agreement and weekly rent book**

**96.** Where a tenant makes an application under section 30(2) (duty of landlord under assured tenancy to provide written tenancy document and weekly rent book) of the 1988 Act, the application must—

- (a) state—
  - (i) the name and address of the tenant;
  - (ii) the name, address and registration number (if any) of the landlord;
  - (iii) the name, address and profession of any representative of the landlord;
- (b) be accompanied by a copy of the rent book or similar document (if any); and
- (c) must be signed and dated by the landlord or a representative of the landlord.

**Application for order for possession upon termination of a short assured tenancy**

**97.** Where a landlord makes an application under section 33 (recovery of possession on termination of a short assured tenancy) 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 any representative of the landlord;
  - (iii) the name and address of the tenant;
- (b) be accompanied by a copy of—
  - (i) the notice given to the tenant under section 33(1)(d) of the 1988 Act;
  - (ii) the notice to quit served by the landlord on the tenant; and
- (c) be signed and dated by the landlord or a representative of the landlord.

**Application for damages for unlawful eviction**

**98.** Where a former residential occupier makes an application under section 36(6A) or (6B) (damages for unlawful eviction) of the 1988 Act, the application must—

- (a) state—
  - (i) the name and address of the former residential occupier;
  - (ii) the name, address and profession of any representative of the former residential occupier;
  - (iii) the name and address and registration number (if any) of the landlord;
  - (iv) the details of the amount of damages sought based on section 37 of the 1988 Act in respect of the loss of the right to occupy the premises; and
- (b) be signed and dated by the former residential occupier or a representative of the former residential occupier.

**Parties to be notified by the First-tier Tribunal**

**99.** The parties are, in relation to an application —

- (a) under section 18(1), 22(2), 30(2) or 33 of the 1988 Act, the landlord and the tenant;
- (b) under section 36(6A) or (6B) of the 1988 Act, the former residential occupier and the landlord.

## CHAPTER 9

### Procedure in respect of adaptations of rented houses applications

#### **Application to appeal the decision of a landlord in relation to adapting a rented house for a disabled person**

**100.** Where a tenant makes an application under section 66A(1) (appeals in relation to section 52) of the 2006 Act, the application must—

- (a) state—
  - (i) the name and address of the tenant;
  - (ii) the name, address and profession of any representative of the tenant;
  - (iii) the name, address and registration number (if any) of the landlord;
  - (iv) details of the works requested by the tenant;
  - (v) details of the landlord’s decision and reasons for that decision; and
- (b) be signed and dated by the tenant or a representative of the tenant.

#### **Parties to be notified by the First-tier Tribunal**

**101.** The parties are, in relation to an application under section 66A(1) of the 2006 Act, the landlord and the tenant.

## CHAPTER 10

### Procedure in respect of tenancy deposit applications

#### **Interpretation**

**102.** In this Chapter of these Rules, “the Tenancy Deposit Regulations” means the Tenancy Deposit Schemes (Scotland) Regulations 2011<sup>(a)</sup>.

#### **Application for order for payment where landlord has not paid the deposit into an approved scheme**

**103.** Where a tenant or former tenant makes an application under regulation 9 (court orders) of the Tenancy Deposit Regulations, the application must—

- (a) state—
  - (i) the name and address of the tenant or former tenant;
  - (ii) the name, address and profession of any representative of the tenant or former tenant;
  - (iii) the name, address and registration number (if any) of the landlord;
- (b) be accompanied by a copy of the tenancy agreement; and
- (c) be signed and dated by the tenant or former tenant or a representative of the tenant or former tenant.

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(a) S.S.I. 2011/176.

### **Parties to be notified by the First-tier Tribunal**

**104.** The parties are, in relation to an application under regulation 9 of the Tenancy Deposit Regulations, a tenant or former tenant and the landlord.

## **CHAPTER 11**

### **Procedure in respect of private residential tenancy applications**

#### **Interpretation**

**105.** In this Chapter of these Rules—

“the 2016 Act” means the Private Housing (Tenancies) (Scotland) Act 2016<sup>(a)</sup>.

#### **Application to draw up terms of tenancy**

**106.** Where the tenant makes an application under section 14(1) (to draw up terms where written terms have not been provided) of the 2016 Act, the application must—

- (a) state—
  - (i) the name and address of the tenant;
  - (ii) the name, address and profession of any representative of the tenant;
  - (iii) the name, address and registration number (if any) of the landlord;
- (b) be accompanied by a copy of the notification to the landlord as required under section 14(3) of the 2016 Act; and
- (c) be signed and dated by the tenant or a representative of the tenant.

#### **Application to draw up terms of tenancy where statutory term is unlawfully displaced**

**107.** Where a person makes an application under section 14(2) (to draw up terms where statutory term is unlawfully displaced) of the 2016 Act, the application must—

- (a) state—
  - (i) the name, address and registration number (if any) of the tenant or landlord;
  - (ii) the name, address and profession of any representative of the tenant or landlord;
  - (iii) the name and address of the other party to the private residential tenancy;
  - (iv) which of the statutory terms has been unlawfully displaced;
- (b) be accompanied by—
  - (i) a copy of the written terms of tenancy;
  - (ii) evidence to support that a statutory term has been unlawfully displaced; and
- (c) be signed and dated by the tenant or landlord or a representative of the tenant or landlord.

#### **Application for payment order where landlord has failed to provide information**

**108.** Where the tenant makes an application under section 16(1) (to sanction failure to provide information) of the 2016 Act, the application must—

- (a) state—
  - (i) the name and address of the tenant;
  - (ii) the name, address and profession of any representative of the tenant;
  - (iii) the name, address and registration number (if any) of the landlord;

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(a) 2016 asp 19.



- (iv) what information required under section 11 of the 2016 Act the landlord has failed to provide (if any);
- (b) be accompanied by a copy of the notice given to the landlord under section 16(3)(c) of the 2016 Act; and
- (c) be signed and dated by the tenant or a representative of the tenant.

#### **Application to appeal rent set by the rent officer**

**109.** Where a tenant or landlord makes an application under section 28(1) (to appeal the rent set by the rent officer) of the 2016 Act, the application must—

- (a) state—
  - (i) the name, address and registration number (if any) of the tenant or landlord;
  - (ii) the name, address and profession of any representative of the tenant or landlord;
  - (iii) the name and address of the other party to the private residential tenancy;
  - (iv) the reasons why the applicant is appealing against the rent officer's decision;
- (b) be accompanied by a copy of the rent officer's decision; and
- (c) be signed and dated by the tenant or landlord or a representative of the tenant or landlord.

#### **Application for an eviction order**

**110.** Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 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 any representative of the landlord;
  - (iii) the name and address of the tenant;
  - (iv) the ground or grounds for eviction;
- (b) be accompanied by—
  - (i) evidence tending to show that the eviction ground or grounds has been met;
  - (ii) a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act;
  - (iii) a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and
- (c) be signed and dated by the landlord or a representative of the landlord.

#### **Application for a wrongful termination order**

**111.** Where a former tenant makes an application under section 57(2) (wrongful termination by eviction order) or section 58(2) (wrongful termination without eviction order) of the 2016 Act, the application must—

- (a) state—
  - (i) the name and address of the tenant;
  - (ii) the name, address and profession of any representative of the tenant;
  - (iii) the name, address and registration number (if any) of the landlord; and
- (b) be accompanied by evidence tending to show that the tenancy was unlawfully terminated; and
- (c) be signed and dated by the tenant or landlord or a representative of the tenant or landlord.

### **Application for civil proceedings in relation to a private residential tenancy**

**112.** Where a person makes any other application to the First-tier Tribunal by virtue of section 71(1) (First-tier Tribunal's jurisdiction) of the 2016 Act, the application must—

- (a) state—
  - (i) the name and address of the person;
  - (ii) the name and address of any other party;
  - (iii) the reason for making the application;
- (b) be accompanied by—
  - (i) evidence to support the application;
  - (ii) a copy of any relevant document; and
- (c) be signed and dated by the person.

### **Parties to be notified by the First-tier Tribunal**

**113.** The parties are, in relation to an application made under a section of the 2016 Act, the landlord (or former landlord) and the tenant (or former tenant).

### **No postponement permitted**

**114.** A tenant may not apply for a postponement of a hearing where the hearing relates to an application for eviction and the ground, or one of the grounds, cited is rent arrears to which paragraph 12(2) of schedule 3 of the 2016 Act applies.

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

## Annex B: Relevant and Associated Legislation

- The First-tier Tribunal for Scotland (Chambers) Regulations 2016  
<http://www.legislation.gov.uk/ssi/2016/341/contents/made>
- The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016  
<http://www.legislation.gov.uk/ssi/2016/335/contents/made>
- The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016  
<http://www.legislation.gov.uk/ssi/2016/339/contents/made>
- The First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Committees) Regulations 2016  
<http://www.legislation.gov.uk/ssi/2016/337/contents/made>
- The First-tier Tribunal for Scotland Housing and Property Chamber and Upper Tribunal for Scotland (Composition) Regulations 2016  
<http://www.legislation.gov.uk/ssi/2016/340/contents/made>
- The Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016 <http://www.legislation.gov.uk/ssi/2016/342/introduction/made>
- The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016  
<http://www.legislation.gov.uk/ssi/2016/232/contents/made>
- The Upper Tribunal for Scotland (Rules of Procedure) Amendment Regulations 2017
- [http://www.legislation.gov.uk/ssi/2016/333/pdfs/ssi\\_20160333\\_en.pdf](http://www.legislation.gov.uk/ssi/2016/333/pdfs/ssi_20160333_en.pdf)
- The Scottish Tribunals (Time Limits) Regulations 2016  
<http://www.legislation.gov.uk/ssi/2016/231/contents/made>

- The Private Rented Housing Panel (Tenant and Third Party Applications) (Scotland) Regulations 2015.  
<http://www.legislation.gov.uk/ssi/2015/369/contents/made>
- The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016  
<http://www.legislation.gov.uk/ssi/2016/336/contents/made>
- The Upper Tribunal for Scotland (Rules of Procedure) Amendment Regulations 2016  
<http://www.legislation.gov.uk/ssi/2016/333/contents/made>
- The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016  
[http://www.legislation.gov.uk/ssi/2016/339/pdfs/ssi\\_20160339\\_en.pdf](http://www.legislation.gov.uk/ssi/2016/339/pdfs/ssi_20160339_en.pdf)
- Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 2) (Miscellaneous) 2016.  
<http://www.legislation.gov.uk/ssi/2016/229/contents/made>
- The Act of Sederunt (Simple Procedures) 2016  
<http://www.legislation.gov.uk/ssi/2016/200/contents/made>
- The Legal Aid (Scotland) Act 1986 Amendment Regulations 2016  
<http://www.legislation.gov.uk/ssi/2016/356/contents/made>
- The Housing (Scotland) Act 2014  
[http://www.legislation.gov.uk/asp/2014/14/pdfs/asp\\_20140014\\_en.pdf](http://www.legislation.gov.uk/asp/2014/14/pdfs/asp_20140014_en.pdf)
- The Tribunals (Scotland) Act 2014  
<http://www.legislation.gov.uk/asp/2014/10/enacted>

## HOW WE WOULD LIKE YOU TO HELP

This consultation outlines proposals on the operational procedures of the draft First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the 2017 Rules).

Please read the consultation paper and give us your views on the 2017 Rules. Your answers will help us shape a single set of rules to apply across the expanded Housing and Property Chamber from December 2017.

### Responding to this Consultation

We are inviting responses to this consultation no later than Friday 31<sup>st</sup> March 2017. Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You can view and respond to this consultation online at <https://consult.scotland.gov.uk/better-homes-division/procedure-first-tier-tribunal-housing>. You can save and return to your responses while the consultation is still open. However please ensure that consultation responses are submitted before the closing date of Friday 31<sup>st</sup> March 2017

### Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete the Respondent Information and question form, and return to:

Better Homes Division  
Housing Services Policy Unit  
Area 1H South, Victoria Quay  
Commercial Street  
Edinburgh EH6 6QQ

If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>.

If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

### **Scottish Government consultation process**

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



Annex C:

## Consultation on Procedure of the First-Tier Tribunal Housing and Property Chamber

### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- ☐ Individual  
☐ Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- ☐ Publish response with name  
☐ Publish response only (without name)  
☐ Do not publish response

#### Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- ☐ Yes  
☐ No





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