

Current position under the Housing (Scotland) Act 1988 (the 1988 Act) assured tenancy system

When providing certain documents to a tenant under an assured tenancy or short assured tenancy, a landlord must comply with particular legislative requirements, including:

- when creating a tenancy agreement, the provisions of the Requirements of Writing (Scotland) Act 1995 must be met, which means that a tenancy agreement must be provided in writing by hard copy and signed by the landlord(s), tenant(s) and a witness.
- when a landlord issues a tenant with a Notice to Quit, the provisions in the Sheriff Courts (Scotland) Act 1907 must be met, which means that the notice must be either delivered to the tenant personally by a landlord or a sheriff officer, or by the postal service using recorded delivery.

Provisions in the 2016 Act

Section 10 of the 2016 Act requires a landlord to give a tenant a written document setting out all of the terms of the tenancy. Paragraph 6 of schedule 4 to the 2016 Act disapplies the Requirements of Writing (Scotland) Act 1995 from the new tenancy. This means that there are no particular legal requirements in relation to providing a hard copy of the written tenancy terms agreement or obtaining signatures or witnesses. Basically, the 2016 Act does not specify 'how' the written document should be provided to the tenant.

As outlined above in '**Error! Reference source not found.**', we intend to prescribe some notices in secondary legislation, which include the following documents:

- Tenant's notification to a landlord for a referral to the Tribunal under section 14 and section 16 of the 2016 Act.
- Landlord's notification to a tenant of a rent-increase under section 22 of the 2016 Act
- Tenant's notification to the landlord advising him or her that a referral to a rent officer is being made for rent adjudication
- Notice to leave from a landlord to a sub-tenant; and
- Notice to leave from a landlord to a tenant.

We can, if considered necessary, also specify in the secondary legislation 'how' these documents should be served on a person.

Default position on serving documents

If we do not specify in the secondary legislation how documents under the new tenancy should be served on a person, the provisions of the Interpretation and Legislative Reform Act 2010 (ILRA) will automatically apply.

Section 26 of ILRA makes provision about the service of documents and sets down a default rule which applies whenever an Act of the Scottish Parliament or Scottish

Statutory Instrument authorises or requires a document to be served on a person; regardless of the expression used i.e. it covers “serve”, “give”, “send” or any other relevant terminology.

It sets out three ways in which a document can be served: personal delivery; post (by recorded delivery); or, if agreed with the recipient in advance and in writing, by using “electronic communications” (such as email).

ILRA also provides that where a document is served by post, on an address within the United Kingdom, it is taken to have been received 48 hours after it is sent. Similarly when a document is served using electronic communications, it is also taken to have been received 48 hours after it is sent. Although these presumptions can be challenged in individual cases given the potential difficulties with postal service and problems which may arise with delivery by service providers/internet for email.

Our proposal

We do not intend to include in the secondary legislation ‘how’ documents should be served on a person. Instead, the delivery methods set out in section 26 of ILRA will apply to all documents issued under the new tenancy. This means that where the 2016 Act requires a document to be served on a person, it could be served by: personal delivery; post (by recorded delivery); or, if agreed with the recipient in advance and in writing¹, by “electronic communications” (such as email). These options will enable a landlord and a tenant to communicate in a way which suits them best.

We consider that introducing an option for all communications under the new tenancy to be sent electronically, subject to the landlord’s and tenant’s prior written agreement, seems a sensible approach and one which many landlord and tenants are likely to find appealing. A landlord and a tenant must mutually agree in advance to the use of electronic communications as their preferred delivery method and provide relevant email addresses. If one of them is not content with this approach, it cannot be used and instead one of the other ways to serve documents must be used i.e. personal delivery or by postal service which provides for the delivery of the document to be recorded.

Where a landlord and tenant have mutually agreed to send documents electronically, this will enable faster communications between the landlord and tenant and allow business to be done efficiently and cost-effectively through reducing printing and postage costs and impacts on the environment.

We recognise that some tenants and landlords may prefer to use hard copy documents and our proposal will enable this practice to continue. The addition of the electronic communications option will help ensure that the new tenancy is modern, fit for purpose and meets the needs of those who live and operate in the sector. In today’s society, where technology is progressing at speed and the use of electronic

¹ The requirement to agree this with the recipient in advance and in writing could be met by including clause 4 in the Recommended Model Tenancy Agreement (see page 65 above).

communications is now considered the norm, we think that the provisions in section 26 of ILRA provide suitable flexible options for landlords and tenants