

**Tribunals (Scotland) Act 2014 -  
Consultation on Draft  
Regulations for:  
(1) the Transfer of Functions and  
Members of (A) the Private  
Rented Housing Panel and (B)  
the Homeowner Housing Panel,  
to the Scottish Tribunals, and;  
(2) the Composition of the  
Scottish Tribunals when hearing  
Housing and Property cases.**

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## **PART 1: CONSULTATION ON DRAFT REGULATIONS TO TRANSFER THE FUNCTIONS AND MEMBERS OF THE PRIVATE RENTED HOUSING PANEL AND HOMEOWNER HOUSING PANEL (AND THEIR ASSOCIATED COMMITTEES) TO THE FIRST-TIER TRIBUNAL FOR SCOTLAND**

1. This consultation seeks your views on draft regulations to transfer the functions and members of the Private Rented Housing Panel (prhp), the Private Rented Housing Committee (prhc), the Homeowner Housing Panel (hohp) and the Homeowner Housing Committee (hohc) to the First-tier Tribunal for Scotland.

### **Background**

2. The Tribunals (Scotland) Act 2014 (“the 2014 Act”) creates a new, simplified statutory framework for tribunals in Scotland, bringing existing tribunal jurisdictions together and providing a structure for new jurisdictions. The Act creates two tribunals, the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland, known collectively as the Scottish Tribunals.
3. The 2014 Act also provides for Chambers within the First-tier Tribunal into which existing tribunals listed in Schedule 1 of the Act and their associated functions and members can be transferred.
4. The prhc/hohc are listed in Schedule 1 of the 2014 Act. Due to changes in legislation the Act is also being amended to include references to the prhp/hohp in the Schedule. This was subject to a recent consultation which concluded on 28 July 2015 and no objections were made to the making of these amendments.
5. Section 28(2) of the 2014 Act provides the power for the Scottish Ministers to make regulations to transfer the functions of the listed tribunals in Schedule 1 of the 2014 Act, to the First-tier Tribunal only; the Upper Tribunal only; or to the First-tier Tribunal and the Upper Tribunal.
6. Schedule 2 (see section 29) of the 2014 Act provides the power for the Scottish Ministers to make regulations to transfer the members from the listed tribunals to hold particular positions/membership in the First-tier or Upper Tribunals.
7. Schedule 9, paragraph 2(2) (also see section 81) of the 2014 Act provides the power for the Scottish Ministers to make regulations for the procedural rules of a listed tribunal that are in force immediately before the transfer to have effect for the purposes of either or both the First-tier Tribunal and the Upper Tribunal.

### The Private Rented Housing Panel and Committees

8. The prhp was created by the Housing (Scotland) Act 2006 which renamed the Rent Assessment Committees as the prhp. The prhp provides an appeal route for private tenants who believe that their landlord has not met the necessary repairing standard. If the prhp accepts the tenant's appeal this is referred to a committee, drawn from Panel members and called the prhc.

### Extension of the prhp's jurisdiction

9. The Housing (Scotland) Act 2014 allows Local Authorities to apply to the prhp for a determination on whether the landlords' repairing standard is being met. It also allows landlords to apply to the [prhc] for assistance in gaining entry to a property in order to carry out the necessary repairs. These provisions extend the jurisdiction of the prhp and are subject to separate secondary legislation which is not yet in force. The draft regulations therefore allow for necessary amendments to this legislation as appropriate.

### The Homeowner Housing Panel and Committees

10. The Property Factors (Scotland) Act 2011 created the hohp. The hohp enables homeowners to apply to the hohp for a determination of whether their property factor has carried out their property factor duties or complied with the property factor's code of conduct.

## **Draft Regulations**

11. The policy intent is for tribunals to transfer into the Scottish Tribunals structure with their existing membership and functions in so far as practicable. Upon transfer, the prhp/hohp and their committees will be abolished and thereafter first decisions will be heard in the First-tier Tribunal for Scotland, Housing and Property Chamber with onward appeal to the Upper Tribunal for Scotland.
12. The draft regulations contained in **Annexes A and B** provide for:
  - the transfer of functions of the prhp/prhc and the hohp/hohc to the Scottish Tribunals;
  - Transitional arrangements to regulate how cases pending, in progress and new cases will be dealt with;
  - Consequential amendments and repeals required in light of the transfer of functions;
  - the transfer of the President and members of the prhp/hohp to the First-tier Tribunal for Scotland;

- the current procedural rules of the prhc/hohc to continue to apply (subject to appropriate amendment) post transfer.

13. The draft regulations are attached at **Annexes A and B**.

### **Transitional arrangements**

14. We propose that from 1<sup>st</sup> September 2016 all applications to the prhp and hohp will transfer to the First-tier Tribunal. Cases in progress on the day of transfer will be continued in the First-tier Tribunal. If a hearing is in progress then it will be completed by the First-tier Tribunal comprised of the same members, where possible. Time limits which have started to run prior to commencement of these regulations and have not expired shall continue to apply.
15. If a party wishes to appeal a decision of the prhp or hohp but has not exercised this right before 1<sup>st</sup> September 2016 then we propose the appeal route will be to the Upper Tribunal as opposed to the Sheriff Court where appeals are currently heard. We propose that if a party has already exercised their right of appeal before 1<sup>st</sup> September 2016 then this will be heard by the Sherriff Court.

### **Transfer of members**

16. The policy intent is for existing members of both panels to transfer into the First-tier Tribunal as long as they meet the relevant eligibility criteria. The eligibility criteria for legal and ordinary members of the Housing and Property Chamber is the subject of a separate consultation which closes on 9 October 2015.<sup>1</sup>
17. The draft Regulations propose that legal members of the prhp/hohp will transfer in as legal members of the First-tier Tribunal, Housing and Property Chamber. Housing and Surveyor members will transfer in as ordinary members of the Chamber. Members terms and conditions are subject to requirements laid out in Schedule 7 and 8 of the 2014 Act but otherwise it is proposed that existing terms and conditions are to be preserved.
18. In accordance with provisions set out in the 2014 Act (Schedule 9, paragraph 11), which adds tribunal members to the judicial officers who are subject to the retirement provisions set out in the Judicial Pensions and Retirement Act 1993, tribunal members will be required to retire at age 70, with the possibility of reappointment on an annual basis until reaching the age of 75. Therefore,

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<sup>1</sup> <http://www.gov.scot/Publications/2015/07/1590>

existing members will only be eligible to transfer-in to the First-tier Tribunal if they are under the age of 75. Members who are over 70 will only be able to transfer-in to the First-tier Tribunal with the approval of the Housing and Property Chamber President and appointment will be reviewed on an annual basis until the member reaches 75.

19. We propose that the current President of the prhp/hohp will transfer into the position of Chamber President of the Housing and Property Chamber. At present we feel there is no need for a Deputy President of the Chamber. We intend to rely on provisions in the 2014 Act which allows the President of the Scottish Tribunals to assign a Temporary Chamber President to cover a vacancy should the Chamber President become incapacitated or resign.

### **Amendments to existing procedural rules**

20. As the prhp and hohp already have comprehensive procedural rules in place there is no requirement to produce new rules for the First-tier Tribunal Housing and Property Chamber. Rather the draft Regulations contain provisions to amend existing rules as required to ensure consistency amongst the tribunals within the Chamber.
21. In particular, the draft Regulations will amend existing hohp rules to allow the First-tier Tribunal to review a decision in the interests of justice, such as where there has been an administrative error.
22. The rules are also proposed to be amended to allow the tribunal to award expenses against a party if they have been unreasonable and caused the other party unnecessary or unreasonable expenses.
23. We also propose to amend the prhp rules to introduce a 30 day time limit for appeals from the First-tier Tribunal to the Upper Tribunal, including a requirement to ask for permission to appeal, to keep it consistent with the provisions in the hohp rules.
24. The appeal route for both the prhp and hohp will be amended so as appeals are made to the Upper Tribunal. The aim is to keep tribunal business within the tribunal system and out of the courts.

## QUESTIONS ON THE TRANSFER OF THE PRHP/HOHP

Q1: Do you have any comments on the draft transfer of functions and members Regulations?

Q2: Are you content with the provisions regarding transitional arrangements?

Q3: Are you content with the provisions relating to the transfer of members?

Q4: Do you have any views on the proposed amendments to existing procedural rules?

**Do you have any other comments you wish to make?:**

## **PART 2: CONSULTATION ON DRAFT REGULATIONS THAT DETERMINE THE COMPOSITION OF THE FIRST-TIER & UPPER TRIBUNAL FOR SCOTLAND WHEN HEARING CASES IN AND FROM THE HOUSING AND PROPERTY CHAMBER**

1. This consultation seeks your views on draft regulations that determine the composition of the First-tier Tribunal when hearing Private Rented Sector and Letting Agent Cases and the Upper Tribunal when hearing appeals from the Housing and Property Chamber.

### **2. Background**

3. Section 38 and 40 of the Tribunals (Scotland) Act 2014 (the “2014 Act”) allows the Scottish Ministers to determine the composition of the First-tier and Upper Tribunals for Scotland. This includes whether a case is heard by a single member or by two or more members and whether a case is to be heard by ordinary, legal or judicial members.
4. The first tribunals that will transfer-in to the Scottish Tribunals are the Private Rented Housing Panel (prhp) and the Homeowner Housing Panel (hohp). The draft transfer of functions regulations set out in **Annexes A and B** allow for the composition of members hearing cases in these tribunals to remain the same when transferred-in to the First-tier Tribunal and therefore the regulations at **Annex C** only apply to these tribunals in so far as appeals from the prhp and hohp to the Upper Tribunal.

### **5. Tribunals affected by these regulations**

6. The Housing (Scotland) Act 2014 establishes two new tribunals whose functions are conferred directly on the First-tier Tribunal. These are the jurisdiction for civil cases relating to the private rented sector (the PRS tribunal), which will transfer from the sheriff court<sup>2</sup>– broadly speaking these comprise applications relating to tenancies and occupancy agreements. The First-tier Tribunal will also handle cases regarding alleged failure to comply with the new letting agent code of practice<sup>3</sup> (Letting Agents tribunal).

### **7. DRAFT REGULATIONS**

8. The draft regulations apply to the composition of members when hearing cases within the First-tier Tribunal, Housing and Property Chamber, PRS and Letting Agents jurisdictions and all appeals from the First-tier Tribunal Housing and Property Chamber to the Upper Tribunal.
9. The draft regulations at **Annex C** propose that the First-tier Tribunal, when convened to hear PRS and Letting Agent cases, will be composed of a legal member alone, a legal member with one ordinary member, or a legal member

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<sup>2</sup> section 16 of the Housing (Scotland) Act 2014

<sup>3</sup> section 48 of Housing (Scotland) Act 2014



with two ordinary members, as the Chamber President feels fitting for the particular type of case.

10. For appeals from the First-tier Tribunal, Housing and Property Chamber the regulations propose that these will be heard, in the majority of cases, by a full-time sheriff sitting in the Upper Tribunal. Section 17(2)(c) of the 2014 Act disallows part-time sheriffs from sitting in the Upper Tribunal.
11. It is also proposed that the President of the Scottish Tribunals has the right to choose the Chamber President of the Housing and Property Chamber to sit in the Upper Tribunal should they consider that there is a particular expertise required to hear a case. The Chamber President will be able to sit alone or with a sheriff. The draft regulations specify that this would only be possible if the Chamber President had not been involved previously with the initial decision making in the First-tier Tribunal.
12. Section 16(2)(b) of the 2014 Act disallows Temporary Chamber Presidents from sitting in the Upper Tribunal.

## **QUESTIONS ON COMPOSITION**

Q1: Do you have any comments on the draft regulations on Composition?

Q2: Do you have any views on the proposed composition for the Housing and Property Chamber hearing Private Rented Sector and Letting Agent cases?

Q3: Do you have any comments on the proposed composition of the Upper Tribunal hearing appeals from the Housing and Property Chamber of the First-tier Tribunal?

**Do you have any other comments you wish to make?**

**DRAFT REGULATIONS TO TRANSFER THE FUNCTIONS AND MEMBERS OF  
THE PRIVATE RENTED HOUSING PANEL AND ITS ASSOCIATED COMMITTEE  
TO THE FIRST-TIER TRIBUNAL FOR SCOTLAND**

*Draft Regulations laid before the Scottish Parliament under section 79(2)(b) of the Tribunals (Scotland) Act 2014, for approval by resolution of the Scottish Parliament.*

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D R A F T   S C O T T I S H   S T A T U T O R Y   I N S T R U M E N T S

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**2016 No.**

**TRIBUNALS AND INQUIRIES**

**The First-tier Tribunal for Scotland (Transfer of functions of the  
Private Rented Housing Panel etc.) Regulations 2016**

*Laid before the Scottish Parliament-                      8th January 2016*

*Coming into force -    1st September 2016*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 28(2) of, paragraph 1(1) of Schedule 2 to, and paragraph 2(2) of Schedule 9 to, the Tribunals (Scotland) Act 2014<sup>(4)</sup> (“the Act”) and all other powers enabling them to do so.

In accordance with section 79(2)(b) of the Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

**Citation and commencement**

**1.**—(1) These regulations may be cited as the First-tier Tribunal for Scotland (Transfer of functions of the Private Rented Housing Panel etc.) Regulations 2016.

(2) These Regulations come into force on 1st September 2016.

**Interpretation**

**2.** In these Regulations—

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

“the First-tier Tribunal” means the First-tier Tribunal for Scotland established by section 1(1)(a) of the 2014 Act;

“the prhcs” means the rent assessment committees constituted in accordance with Schedule 4 to the Rent (Scotland) Act 1984(5) to be known as the private rented housing committees in terms of section 21(2) of the Housing (Scotland) Act 2006(6);

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<sup>(4)</sup> 2014 asp 10.

“the prhcs functions” means the functions exercised by prhcs by virtue of section 21(3) of the Housing (Scotland) Act 2006;

“the prhp” means the panel constituted under Schedule 4 to the Rent (Scotland) Act 1984, to be known as the private rented housing panel in terms of section 21(1) of the Housing (Scotland) Act 2006; and

“the prhp functions” means the functions exercised by the prhp, the president of the panel (but not the vice-president of the panel) and members of the panel, by virtue of section 21(3) of the Housing (Scotland) Act 2006.

### **Transfer of prhcs functions and prhp functions to First-tier Tribunal**

3.—(1) Subject to regulations 6 and 7, the prhcs functions and the prhp functions are transferred to the First-tier Tribunal Housing and Property Chamber, which shall act as a single decision making body (i.e. without any delegation to committees).

(2) The functions transferred by paragraph (1) shall be treated as subject to any necessary modifications so that they can be exercised by the First-tier Tribunal Housing and Property Chamber as a single decision making body.

### **Transfer of prhp members to First-tier Tribunal**

4.—(1) Subject to paragraph (3), members of the prhp under the age of 75 on the coming into force of these Regulations are transferred to and become members of the First-tier Tribunal Housing and Property Chamber, with legal members of the prhp becoming legal members of the First-tier Tribunal and non-legal members of the prhp becoming ordinary members of the First-tier Tribunal.

(2) Members of the prhp transferred to the First-tier Tribunal under paragraph (1) shall be subject to the provisions of schedules 7 and 8 to the 2014 Act, but otherwise shall be members of the First-tier Tribunal under their existing terms and conditions.

(3) A member of the prhp who is over the age of 70 on the coming into force of these Regulations shall transfer only if the Chamber President of the First-tier Tribunal Housing and Property Chamber has confirmed that the Chamber President considers it desirable in the public interest that the member shall remain in office. This period is able to be extended on an annual basis (until the member reaches the age of 75).

### **Dissolution of prhp**

5. On transfer of prhp functions under regulation 3(1) and transfer of prhp members under regulation 4(1), the prhp is dissolved.

### **Transitional and savings provisions**

6. Schedule 1 to these Regulations contains transitional and savings provisions.

### **Application of prhp/prhcs procedural rules in First-tier Tribunal**

7.—(1) Subject to paragraph (2), the Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007<sup>(7)</sup> shall apply in respect of proceedings before the First-tier Tribunal Housing and Property Chamber when exercising the functions transferred to it by regulation 3(1).

(2) The reference in paragraph (1) to the Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007 is to those Regulations subject to the amendments set out in Part 1 of Schedule 2 to these Regulations.

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<sup>(5)</sup> 1984 c. 58  
<sup>(6)</sup> 2006 asp 1.  
<sup>(7)</sup> 2007 S.S.I. 2007/173.

(3) Part 2 of Schedule 2 to these Regulations sets out further provisions in respect of proceedings before the First-tier Tribunal Housing and Property Chamber when exercising the functions transferred to it by regulation 3(1).

### **Consequential amendments and repeals**

**8.**—(1) The consequential amendments and repeals to primary legislation set out in Schedule 3 to these Regulations have effect.

(2) The consequential amendments and repeals to Orders and regulations set out in Schedule 4 to these Regulations have effect.

A member of the Scottish Government

St Andrew's House,  
Edinburgh

2016

## SCHEDULE 1

Regulation 6

### Transitional and savings provisions

#### **Proceedings pending before the prhp/the prhcs immediately before 1st September 2016 to transfer to First-tier Tribunal**

1. Any proceedings before the prhp/the prhcs which are pending immediately before 1st September 2016 shall continue on and after that date as proceedings before the First-tier Tribunal Housing and Property Chamber.

#### **Proceedings in progress before the prhp/the prhcs on 1st September 2016 to transfer to First-tier Tribunal**

2. Any proceedings already in progress before the prhp/the prhcs on 1st September 2016 but not completed shall be transferred to and be completed by the First-tier Tribunal Housing and Property Chamber but with so far as possible the same persons hearing the case before the First-tier Tribunal Housing and Property Chamber as members of that body as were prior to 1st September 2016 hearing the case as members of the prhp/the prhcs.

#### **Decisions, directions and orders of the prhp/the prhcs to continue in force**

3. Any decision (whether or not called a decision), direction or order given or made in proceedings before the prhp/the prhcs which is in force immediately before 1st September 2016 remains in force on and after that date as if it were a decision, direction or order of the First-tier Tribunal Housing and Property Chamber.

#### **Time limits in respect of proceedings before the prhp/the prhcs to carry over to First-tier Tribunal**

4. Any time limit which has started to run before these Regulations come into force in respect of proceedings before the prhp/the prhcs (and which has not expired) shall continue to apply where proceedings are transferred to the First-tier Tribunal Housing and Property Chamber.

#### **Unexercised right of appeal to sheriff, if exercised, appeal to Upper Tribunal**

5. Where in respect of a decision of the prhp/the prhcs before 1st September 2016, there lies a right of appeal to the sheriff, which has not been exercised before that date but is still exercisable, any appeal on or after 1st September 2016 shall be to the Upper Tribunal for Scotland as if the decision had been made by the First-tier Tribunal and the appeal shall be an appeal from the First-tier Tribunal for the purposes of section 46(1) of the 2014 Act.

#### **Discretion to dis-apply the Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007**

6. Although, in terms of regulation 7, the Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007 shall apply in respect of proceedings before the First-tier Tribunal Housing and Property Chamber, the Scottish Tribunals may dis-apply any of those Regulations and make other directions if they consider this necessary to ensure that proceedings are dealt with fairly.

#### **Savings provision**

7. Where in respect of a decision of the prhp/the prhcs before 1st September 2016, there lies a right of appeal to the sheriff, which has been exercised before that date, the appeal to the sheriff is not affected by these Regulations.

## PART 1

Amendments to the Private Rented Housing Panel (Applications and Determinations)  
(Scotland) Regulations 2007

8. The Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007 are amended in accordance with paragraphs 2 to 30.

**Amendment of title**

9. In the title, for “Private Rented Housing Panel” substitute “First-tier Tribunal Housing and Property Chamber”.

**Amendment of title of Part 2**

10. For the title of Part 2, substitute “applications to the First-tier Tribunal Housing and Property Chamber”.

**Amendment of regulation 2- Interpretation**

11. In regulation 2—

- (a) in paragraph (1) omit definition of “the Committee”;
- (b) in paragraph (1) omit definition of “the Panel”;
- (c) in paragraph (1) in the appropriate place insert “First-tier Tribunal” means the First-tier Tribunal for Scotland Housing and Property Chamber”;
- (d) in paragraph (1) in the appropriate place insert “the president” means the Chamber President of the First-tier Tribunal for Scotland Housing and Property Chamber”; and
- (e) in paragraph (2) for “the Panel or the Committee” and “the Panel” substitute “the First-tier Tribunal”.

**Amendment of regulation 3-Application**

12. In regulation 3, for “the Panel” twice occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 5-Representation**

13. In regulation 4, for “the Committee” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of sub-heading of Part 3**

14. For the sub-heading of Part 3, substitute “Action by the First-tier Tribunal”.

**Amendment of regulation 6-Acknowledgement of receipt of application**

15. In regulation 6 for “the Panel” or “the Committee” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 7-Resolution by the parties**

16. In regulation 7, for “The Panel Secretary” substitute “The administrative staff”.



**Omission of sub-heading**

17. Omit after regulation 7 the sub-heading “Action by the Committee”.

**Amendment of regulation 9-Notification to landlord of need for additional work**

18. In regulation 9, for “the Committee” substitute “the First-tier Tribunal”.

**Amendment of regulation 10-Further application to follow same procedures**

19. In regulation 10, for “the Committee” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 11-Hearing two or more applications together**

20. In regulation 11, for “the Committee” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 12-Inquiries of the Committee**

21. In regulation 12 and the heading of regulation 12, for “the Committee” substitute “the First-tier Tribunal”.

**Amendment of regulation 13-Service of formal communications**

22. In regulation 13, for “the Committee” substitute “the First-tier Tribunal”.

**Amendment of regulation 14-Directions**

23. In regulation 14, for “the Committee” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 15-Evidence**

24. In regulation 15, for “the Committee” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 16-Correction of orders and statements of reasons**

25. In regulation 16—

- (a) for “the Committee” wherever occurring, substitute “the First-tier Tribunal”; and
- (b) for “the chair” substitute “the chairing member”.

**Amendment of regulation 17-Withdrawal of the application**

26. In regulation 17—

- (a) for “the Committee” substitute “the First-tier Tribunal”; and
- (b) for “the Panel offices” substitute “the First-tier Tribunal offices”.

**Amendment of regulation 18-Inspections**

27. In regulation 18—

- (a) for “the Committee” wherever occurring, substitute “the First-tier Tribunal”; and
- (b) for “the full Committee, or by one member alone,” substitute “one or more members of the First-tier Tribunal”.

**Amendment of regulation 19-Hearings**

28. In regulation 19—

- (a) for “a Committee” or “the Committee” wherever occurring, substitute “the First-tier Tribunal”;  
and
- (b) in paragraph (2), omit words after “fair hearing”.

**Amendment of regulation 20-Exclusion of persons disrupting proceedings**

29. In regulation 20, for “the Committee” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 21-Adjournment**

30. In regulation 21, for “the Committee” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 22-Amendment**

31. In regulation 22, for “the Committee” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 23-Amendment raising new issues of disrepair**

32. In regulation 23, for “the Committee” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 24-Hearing case in absence of party**

33. In regulation 24, for “the Committee” substitute “the First-tier Tribunal”.

**Amendment of regulation 25-Prohibition on electronic recording of proceedings by parties**

34. In regulation 25, for “the Committee” substitute “the First-tier Tribunal”.

35. Amendment of regulation 26-Giving of decisions

36. In regulation 26, for “the Committee” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 27-Expenses**

37. In regulation 27, for “Panel offices” substitute “First-tier Tribunal offices”.

**Amendment of regulation 28-Death or disability of a party**

38. In regulation 28, for “the Committee” substitute “the First-tier Tribunal”.

## PART 2

### Further provisions in respect of proceedings before the First-tier Tribunal Housing and Property Chamber

39. Paragraphs 32 to 35 set out further provisions which apply to proceedings before the First-tier Tribunal Housing and Property Chamber

**Reviews**

40.—(1) The First-tier Tribunal may review a decision (except an excluded decision) made by it in any matter in a case before it.

(2) A decision is reviewable at the First-tier Tribunal’s own instance or on the application of a party in the case.

(3) The exercise by the First-tier Tribunal of discretion whether or not a decision should be reviewed cannot itself give rise to a review or appeal.

- (4) On review of a decision, the First-tier Tribunal may—
  - (a) take no action;
  - (b) set the decision aside; or
  - (c) correct a minor or accidental error contained in the decision.
- (5) A decision is not reviewable under paragraph (1) more than once.
- (6) The First-tier Tribunal must produce a written record of its decision made at a review.

#### **Time limits for permission to appeal - application to decision making forum**

**41.**—(1) For the purposes of the permissions mentioned in section 46(3)(a) of the Act (application for permission to appeal made to the First-tier Tribunal), the following time limit applies.

(2) An application for permission to appeal must be received by the First-tier Tribunal for Scotland within the period of 30 days from the relevant date.

- (3) The relevant date is the later of—
  - (a) the date on which the decision appealed against was sent to the appellant;
  - (b) the date on which the statement of reasons for the decision was sent to the appellant.

#### **Time limits for permission to appeal – application to appellate forum**

**42.**—(1) For the purposes of the permission mentioned in section 46(3)(b) of the Act (application for permission to appeal made to the Upper Tribunal following refusal by the First-tier Tribunal), the following time limit applies.

(2) An application for permission to appeal must be received by the Upper Tribunal for Scotland, within the period of 30 days from the relevant date.

(3) The relevant date is the date on which notice of the First-tier Tribunal for Scotland’s refusal of permission to appeal, was sent to the appellant.

#### **Expenses**

**43.**—(1) The First-tier Tribunal may award expenses against a party but only in a case where that party through unreasonable behaviour in the conduct of a case has put the other party or party to unnecessary or unreasonable expense.

(2) Where expenses are awarded under paragraph(1) the amount of the expenses awarded and recoverable under that paragraph shall be the amount of expenses required to cover any unnecessary or unreasonable expenses incurred by the party in whose favour the order for expenses is made.

## Consequential amendments and repeals of primary legislation

**Rent (Scotland) Act 1984**

- 44.—(1) The Rent (Scotland) Act 1984<sup>(8)</sup> is amended as follows.
- (2) Section 44 (Private rented housing committees) is repealed.
- (3) In section 48, for “the private rented housing committee” substitute “the First-tier Tribunal”.
- (4) In section 49, for “the private rented housing committee” wherever occurring, substitute “the First-tier Tribunal”.
- (5) For the words in section 50(4) substitute “If the rent for a dwelling-house is determined by the First-tier Tribunal, the registration of the rent takes effect from the date when the First-tier Tribunal makes its decision.”.
- (6) In section 53(1)(b) omit “and private rented housing committees”.
- (7) In section 60(2)—
- (a) for “a private rented housing committee” substitute “the First-tier Tribunal”; and
- (b) for “the private rented housing committee” substitute “the First-tier Tribunal”.
- (8) In the heading to section 65, for “ private rented housing committees” substitute “the First-tier Tribunal”.
- (9) In section 65—
- (a) for “the private rented housing committee” substitute “the First-tier Tribunal”; and
- (b) for “a private rented housing committee” substitute “the First-tier Tribunal”.
- (10) In the heading to section 66, for “ private rented housing committees” substitute “the First-tier Tribunal”.
- (11) In section 66—
- (a) for “a private rented housing committee” and “the committee” wherever occurring, substitute “the First-tier Tribunal”; and
- (b) for “a rent assessment committee” substitute “the First-tier Tribunal”.
- (12) Section 66A is repealed.
- (13) In section 67—
- (a) for “the private rented housing committee” and “such committee” substitute “the First-tier Tribunal”; and
- (b) for “the committee” wherever occurring, substitute “the First-tier Tribunal”.
- (14) In section 68, for “the private rented housing committee” substitute “the First-tier Tribunal”.
- (15) In section 70—
- (a) for “a private rented housing committee” and “the committee” wherever occurring, substitute “the First-tier Tribunal”;
- (b) for “the president of the panel” substitute “the Chamber President of the First-tier Tribunal Housing and Property Chamber”; and
- (c) for “the chairman” substitute “the chairing member”.
- (16) In the heading of section 71, for “ private rented housing committee” substitute “the First-tier Tribunal”.

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<sup>(8)</sup> 1984 c. 58.

(17) In section 71, for “a private rented housing committee” and for “the committee” wherever occurring, substitute “the First-tier Tribunal”.

(18) In the heading of section 72, for “ private rented housing committee” substitute “the First-tier Tribunal”.

(19) In section 72, for “a private rented housing committee” and for “the committee” wherever occurring, substitute “the First-tier Tribunal”.

(20) In section 74, for “a private rented housing committee” and for “the committee” wherever occurring, substitute “the First-tier Tribunal”.

(21) In the heading of section 77, for “ private rented housing committees” substitute “the First-tier Tribunal”.

(22) In section 77, for “a private rented housing committee” and “the committee” substitute “the First-tier Tribunal”.

(23) Section 80(1)(a) and (b) are repealed.

(24) In section 81(1) for “a private rented housing committee” substitute “the First-tier Tribunal”.

(25) In section 85(1)(b) for “the private rented housing committee” substitute “the First-tier Tribunal”.

(26) In section 115—

- (a) in paragraph (1) omit definition of “private rented housing committee”; and
- (b) omit paragraph (2).

(27) Schedule 4 is repealed.

(28) In Schedule 5—

- (a) in paragraph 6, for “a private rented housing committee” twice occurring, substitute “the First-tier Tribunal”; and
- (b) in paragraph 7, for “a rent assessment committee” and “a private rented housing committee” wherever occurring, substitute “the First-tier Tribunal”;
- (c) in the subheading after paragraph 7, for “ private rented housing committee” substitute “the First-tier Tribunal”;
- (d) in paragraph 8, for “the private rented housing committee” substitute “the First-tier Tribunal”;
- (e) in paragraph 9, for “the committee” twice occurring, substitute “the First-tier Tribunal”;
- (f) in paragraph 10, for “the committee” wherever occurring, substitute “the First-tier Tribunal”;
- (g) in paragraph 11, for “a private rented housing committee” twice occurring, substitute “the First-tier Tribunal”;
- (h) in paragraph 12, for “a private rented housing committee” wherever occurring, substitute “the First-tier Tribunal”; and
- (i) in paragraph 13, for “the private rented housing committee” and “the rent assessment tribunal” substitute “the First-tier Tribunal”.

## **Housing (Scotland) Act 1988**

**45.**—(1) The Housing (Scotland) Act 1988(9) is amended as follows.

(2) In section 17, for “a private rented housing committee” and “the committee” wherever occurring, substitute “the First-tier Tribunal”.

(3) In section 24, for “a private rented housing committee” substitute “the First-tier Tribunal”.

(4) In section 25, for “a private rented housing committee” and “the committee” wherever occurring, substitute “the First-tier Tribunal”.

(5) In section 25A(4), for “a private rented housing committee” substitute “the First-tier Tribunal”.

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<sup>9</sup>) 1988 c. 9.

(6) In section 25B, for “a private rented housing committee” and “the committee” wherever occurring, substitute “the First-tier Tribunal”.

(7) In the title to section 34, for “private rented housing committee” substitute “the First-tier Tribunal”.

(8) In section 34, for “a private rented housing committee” and “the committee” wherever occurring, substitute “the First-tier Tribunal”.

(9) In the title to section 35, for “private rented housing committee” substitute “the First-tier Tribunal”.

(10) In the title to section 48, for “private rented housing committees” substitute “First-tier Tribunal”.

(11) In section 48, for “private rented housing committees”, “the private rented housing committee” and “the committee” substitute “the First-tier Tribunal”.

(12) In section 48A, for “the private rented housing committee” and “the committee” substitute “the First-tier Tribunal”.

(13) In section 49, for “the private rented housing panel” twice occurring and “private rented housing committees” substitute “the First-tier Tribunal”.

(14) In the title to section 68, for “private rented housing committees” substitute “the First-tier Tribunal”.

(15) In section 68, for “the private rented housing committee” substitute “the First-tier Tribunal”.

### **Tribunals & Inquiries Act 1992**

**46.**—(1) The Tribunals & Inquiries Act 1992<sup>(10)</sup> is amended as follows.

(2) In section 11(7)(b)(i), omit “, 59”.

(3) In Schedule 1, omit paragraph 59.

### **Scottish Public Services Ombudsman Act 2002**

**47.**—(1) The Scottish Public Services Ombudsman Act 2002<sup>(11)</sup> is amended as follows.

(2) Paragraph 5 of schedule 3 is repealed.

### **Anti-Social Behaviour etc. (Scotland) Act 2004**

**48.**—(1) The Anti-Social Behaviour etc. (Scotland) Act 2004<sup>(12)</sup> is amended as follows.

(2) In the title of section 87A, for “private rented housing committee” substitute “First-tier Tribunal”.

(3) In section 87A, for “a private rented housing committee” and “the committee” wherever occurring, substitute “the First-tier Tribunal”.

### **Housing (Scotland) Act 2006**

**49.**—(1) The Housing (Scotland) Act 2006<sup>(13)</sup> is amended as follows.

(2) Section 21 is repealed.

(3) In the heading of section 22, for “private rented housing panel” substitute “the First-tier Tribunal” and in section 22 for “the private rented housing panel” substitute “the First-tier Tribunal”.

(4) In section 22A, for “the private rented housing committee” substitute “the First-tier Tribunal”.

(5) In the heading of section 23, for “private rented housing panel” substitute “the First-tier Tribunal”.

(6) In section 23 —

(a) for “president of the private rented housing panel” and for “the president” wherever occurring, substitute “Chamber President of the First-tier Tribunal Housing and Property Chamber”;

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<sup>(10)</sup> 1992 c. 53.

<sup>(11)</sup> 2002 asp 11.

<sup>(12)</sup> 2004 asp 8.

<sup>(13)</sup> 2006 asp 1.

(b) in sub-paragraph (1)(a), for “refer an application under section 22(1) to a private rented housing committee” substitute “allow an application under section 22(1) to be heard by the First-tier Tribunal”; and

(c) in sub-paragraph(3)(a), for “the panel’s receipt” substitute “the First-tier Tribunal’s receipt”.

(7) In the heading of section 24, for “ private rented housing committee” substitute “the First-tier Tribunal” and in section 24 for “the private rented housing committee” and for “the committee” wherever occurring, substitute “the First-tier Tribunal”.

(8) In section 25, for “the private rented housing committee” and for “the committee” wherever occurring, substitute “the First-tier Tribunal”.

(9) In section 26, for “the private rented housing committee” and for “the committee” wherever occurring, substitute “the First-tier Tribunal”.

(10) In section 27, for “a private rented housing committee” twice occurring, and for “the committee” substitute “the First-tier Tribunal”.

(11) In section 28, for “the private rented housing committee” twice occurring, substitute “the First-tier Tribunal”.

(12) In the heading of section 28A, for “private rented housing panel” substitute “the First-tier Tribunal”.

(13) In section 28A—

(a) for “ the private rented housing panel” substitute “the First-tier Tribunal”;

(b) for “ the president of the panel” substitute “the Chamber President of the First-tier Tribunal Housing and Property Chamber”; and

(c) for “the panel” wherever occurring, substitute “the First-tier Tribunal”.

(14) In the heading of section 28B, for “private rented housing panel” substitute “the First-tier Tribunal”.

(15) In section 28B —

(a) for “ the panel” twice occurring, substitute “the First-tier Tribunal”; and

(b) for “ the private rented housing panel” substitute “the First-tier Tribunal”.

(16) In the heading of section 28C, for “panel” substitute “ First-tier Tribunal”.

(17) In section 28C—

(a) for “ the panel” wherever occurring, substitute “the First-tier Tribunal”; and

(b) for “the private rented housing panel” substitute “the First-tier Tribunal”.

section 29 is repealed.

(18) In section 36, for “a private rented housing committee” substitute “the First-tier Tribunal”.

(19) In section 60, for “the private rented housing committee”, for “a private rented housing committee” and for “the committee” twice occurring, substitute “the First-tier Tribunal”.

(20) In section 61, for “the private rented housing committee” and “a private rented housing committee” substitute “the First-tier Tribunal”.

(21) In section 64—

(a) in sub-section (4)—

(i) for “a private rented housing committee” substitute “the First-tier Tribunal”; and

(ii) for “ the sheriff” substitute “the Upper Tribunal” for Scotland;

(b) in sub-section (5) —

(i) for “ the sheriff” substitute “the Upper Tribunal” for Scotland; and

(ii) for “ the president of the private rented housing panel” substitute “the Chamber President of the First-tier Tribunal Housing and Property Chamber”;

(c) in sub-section (6) for “ the sheriff” substitute “the First-tier Tribunal”;

(d) in sub-section (7), omit words after sub-section (1); and

- (e) after sub-section (7), insert— “(8) The Upper Tribunal in the case of appeals under sub-sections (4) and (5), and the First-tier Tribunal in the case of an appeal under sub-section (6) may, on cause shown, hear an appeal after the deadline set by sub-sections (4), (5) or, as the case may be, (6).
- (22) In section 65 —
- (a) in sub-section (2) —
- (i) for “ the sheriff” substitute “the Upper Tribunal” for Scotland;
- (ii) for “ the president” substitute “the Chamber President of the First-tier Tribunal Housing and Property Chamber”; and
- (iii) for “the committee” substitute “the First-tier Tribunal”;
- (b) in sub-section (3) and (4) for “ the sheriff” substitute “the First-tier Tribunal”; and
- (c) in sub-section (5) for “section 64” substitute “section 64(1)”.
- (23) In section 66(3) omit “, or sub-section (4)(d), (e) or (f), of section 64”.
- (24) Section 67 is repealed.
- (25) In section 181—
- (a) for “the private rented housing committee” and “ the committee” wherever occurring, substitute “the First-tier Tribunal”; and
- (b) in sub-section (2) for “a private rented housing committee” substitute “the First-tier Tribunal”.
- (26) In section 194 —
- (a) in sub-section (1) insert as a definition in the appropriate place ““Upper Tribunal” means the Upper Tribunal for Scotland.”.
- (b) for “ the committee” wherever occurring, substitute “the First-tier Tribunal”;
- (c) in sub-section (1) omit definition of “a private rented housing committee” and “private rented housing panel”; and
- (d) sub-section (5) is repealed.
- (27) In the heading of Schedule 2, for “PRIVATE RENTED HOUSING COMMITTEES” substitute “THE FIRST-TIER TRIBUNAL FOR SCOTLAND”.
- (28) In schedule 2—
- (a) in paragraph 1, for “the private rented housing committee” and “ the committee” wherever occurring, substitute “the First-tier Tribunal”;
- (b) in paragraph 2, for “ the committee” wherever occurring, substitute “the First-tier Tribunal”;
- (c) in paragraph 3, for “ the committee” wherever occurring, substitute “the First-tier Tribunal”;
- (d) in paragraph 4, for “ the committee” substitute “the First-tier Tribunal”;
- (e) in paragraph 5, for “any private rented housing committee” and “a committee” wherever occurring, substitute “the First-tier Tribunal”;
- (f) in paragraph 6, for “a private rented housing committee” and “the committee” wherever occurring, substitute “the First-tier Tribunal”;
- (g) in paragraph 7—
- (i) for “ the president of the private rented housing panel” substitute “the Chamber President of the First-tier Tribunal Housing and Property Chamber”;
- (ii) for “a private rented housing committee” and “the committee” wherever occurring, substitute “the First-tier Tribunal”; and
- (iii) for “ the president” substitute “the Chamber President of the First-tier Tribunal Housing and Property Chamber”;
- (h) in paragraph 8(2), for “any individual member of the private rented housing panel or a private rented housing committee alone” substitute “an individual member of the First-tier Tribunal alone or by a panel of members”.



### **Public Services Reform (Scotland) Act 2010**

**50.**—(1) The Public Services Reform (Scotland) Act 2010<sup>(14)</sup> is amended as follows.

(2) In Schedule 5 omit “any Private Rented Housing Committee” and “Private Rented Housing Panel”.

(3) In Schedule 8 omit “any Private Rented Housing Committee” and “Private Rented Housing Panel”.

### **Public Records (Scotland) Act 2011**

**51.**—(1) The Public Records (Scotland) Act 2011<sup>(15)</sup> is amended as follows.

(2) In the Schedule—

(a) omit “any Private Rented Housing Panel”; and

(b) insert in appropriate places “First-tier Tribunal for Scotland” and “Upper Tribunal for Scotland”.

### **Housing (Scotland) Act 2014<sup>(16)</sup>**

**52.**—(1) The Housing (Scotland) Act 2014<sup>(17)</sup> is amended as follows.

(2) In the insertion by section 25(2) of a new sub-section 22(1A) in the Housing (Scotland) Act 2006, for “private rented housing panel” substitute “First-tier Tribunal Housing and Property Chamber”.

(3) In the insertion by section 25(4)(d) of a new sub-section 23(4A) in the Housing (Scotland) Act 2006, for “the president” substitute “the Chamber President of the First-tier Tribunal Housing and Property Chamber”.

(4) In the insertion by section 26(1) of a new sub-paragraph 1(4) to Schedule 2 to the Housing (Scotland) Act 2006, for “the committee” twice occurring, substitute “the First-tier Tribunal”.

(5) In the insertion by section 27(1) of a new sub-section 64(4A) into the Housing (Scotland) Act 2006—

(a) for “a private rented housing committee” substitute “the First-tier Tribunal”; and

(b) for “sheriff” substitute “Upper Tribunal”.

(6) In the insertion by section 95 of a new paragraph 1A in Schedule 4 to the Rent (Scotland) Act 1984, for “private rented housing panel” substitute “First-tier Tribunal Housing and Property Chamber”.

(7) In the insertion by section 96(1) of a new sub-section 21(8A) in the Housing (Scotland) Act 2006—

(a) for “the president” wherever occurring, substitute “the Chamber President of the First-tier Tribunal Housing and Property Chamber”;

(b) omit “(a) the vice-president of the panel, or”; and

(c) for “the panel” substitute “the First-tier Tribunal Housing and Property Chamber”.

(8) In the insertion by section 96(1) of a new sub-section 21(8B) in the Housing (Scotland) Act 2006, for “the president” substitute “the Chamber President of the First-tier Tribunal Housing and Property Chamber”.

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<sup>(14)</sup> 2010 asp 8.

<sup>(15)</sup> 2011 asp 12.

<sup>(16)</sup> 2014 asp 14.

<sup>(17)</sup> 2014 asp 14.

## SCHEDULE 4

Regulation 8(2)

### Consequential amendments and repeals of subordinate legislation

#### **Rent Assessment Committee (Assured Tenancies) (Scotland) Regulations 1989**

**53.**—(1) The Rent Assessment Committee (Assured Tenancies) (Scotland) Regulations 1989<sup>(18)</sup> are amended as follows.

(2) In the preamble, omit the text from “behalf” to “hereby”.

(3) In regulation 2(1)—

(a) for the definition of “chairman” substitute ““chairing member” means the chairing member of the Tribunal”;

(b) omit definition of “committee”; and

(c) in appropriate place insert ““Tribunal” means the First-tier Tribunal for Scotland Housing and Property Chamber”.

(4) In regulation 3, for “Committee” substitute “Tribunal”.

(5) In the heading of regulation 4, for “committee” substitute “Tribunal”.

(6) In regulation 5(3) omit from “decide “ to the end.

(7) In regulations 4 to 9, for “the committee”, “the Committee” and “a committee” substitute “the Tribunal”.

#### **Assured Tenancies (Rent Information) (Scotland) Order 1989**

**54.**—(1) The Assured Tenancies (Rent Information) (Scotland) Order 1989<sup>(19)</sup> is amended as follows.

(2) In regulations 2, 3 and 4, for “the private rented housing panel” substitute “the First-tier Tribunal for Scotland”.

(3) In paragraph 10 of the Schedule, for “the private rented housing committee” substitute “the First-tier Tribunal for Scotland”.

#### **The Rent Regulation (Forms and Information etc.) (Scotland) Regulations 1991**

**55.**—(1) The Rent Regulation (Forms and Information etc.) (Scotland) Regulations 1991<sup>(20)</sup> are amended as follows.

(2) In paragraph 2 of Schedule 2, for “the Private Rented Housing Committee” substitute “the First-tier Tribunal for Scotland”.

(3) In the entry for Form No. 6 in Schedule 5, for “a private rented housing committee” substitute “the First-tier Tribunal for Scotland”.

(4) In the heading for FORM NO 6, for “THE PRIVATE RENTED HOUSING COMMITTEE” substitute “THE FIRST-TIER TRIBUNAL FOR SCOTLAND”.

#### **Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006**

**56.**—(1) The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006<sup>(21)</sup> are amended as follows.

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<sup>(18)</sup> S.I. 1989/81.

<sup>(19)</sup> S.I. 1989/685.

<sup>(20)</sup> S.I. 1991/1521.

<sup>(21)</sup> S.I. 2006/217.

(2) In regulation 13(2) of both the Housing Benefit Regulations 2006 and the Council Tax Credit(Persons who have attained the qualifying age for state pension credit) Regulations 2006, as modified by paragraph 5(2) of Schedule 3<sup>(22)</sup>, for “a private rented housing committee” and “the committee” substitute “the First-tier Tribunal for Scotland”.

### **Scottish Parliament Disqualification Order 2010**

**57.**—(1) The Scottish Parliament Disqualification Order 2010<sup>(23)</sup> is amended as follows.

(2) In the Schedule, omit “President or vice-president of the panel of persons appointed under Schedule 4 to the Rent (Scotland) Act 1984 to act as chairmen and other members of private rented housing committees”.

(3) In the Schedule, insert at the appropriate places “Any member of the First-tier Tribunal for Scotland” and “Any member of the Upper Tribunal for Scotland”

### **Public Contracts (Scotland) Regulations 2012**

**58.**—(1) The Public Contracts (Scotland) Regulations 2012<sup>(24)</sup> are amended as follows.

(2) In Schedule 1 under the heading of “Scottish Ministers, omit “President or vice-president of the panel of persons appointed under Schedule 4 to the Rent (Scotland) Act 1984 to act as chairmen and other members of private rented housing committees.”

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<sup>(22)</sup> Paragraphs 4 and 5 of Schedule 3 were substituted by regulation 6(2) of the Housing Benefit (Local Housing Allowance, Miscellaneous and Consequential) Amendment Regulations 2007(S.I 2007/2870).

<sup>(23)</sup> S.I 2006/2476.

<sup>(24)</sup> S.S.I. 2012/88.

## **EXPLANATORY NOTE**

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

These regulations make provision for the transfer in to the First-tier Tribunal for Scotland Housing and Property Chamber of the functions and members of the Homeowner Housing Panel and Homeowner Housing Committees. They also make miscellaneous consequential provisions.

**DRAFT REGULATIONS TO TRANSFER THE FUNCTIONS AND MEMBERS OF  
THE HOMEOWNER HOUSING PANEL AND ITS ASSOCIATED COMMITTEE TO  
THE FIRST-TIER TRIBUNAL FOR SCOTLAND**

*Draft Regulations laid before the Scottish Parliament under section 79(2)(b) of the Tribunals (Scotland) Act 2014, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2016 No.**

**TRIBUNALS AND INQUIRIES**

**The First-tier Tribunal for Scotland (Transfer of functions of  
Homeowner Housing Panel etc.) Regulations 2016**

*Laid before the Scottish Parliament-* 2016

*Coming into force - - 1st September 2016*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 28(2) of, paragraph 1(1) of Schedule 2 to, and paragraph 2(2) of Schedule 9 to, the Tribunals (Scotland) Act 2014<sup>(25)</sup> (“the Act”) and all other powers enabling them to do so.

In accordance with section 79(2)(b) of the Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

**Citation and commencement**

**59.**—(1) These regulations may be cited as the First-tier Tribunal for Scotland (Transfer of functions of Homeowner Housing Panel etc.) Regulations 2016.

(2) These Regulations come into force on 1st September 2016.

**Interpretation**

**60.** In these Regulations —

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

the “First-tier Tribunal” means the First-tier Tribunal for Scotland established by section 1(1)(a) of the 2014 Act;

the “hohcs” means the homeowner housing committees constituted in accordance with Schedule 4 to the Rent (Scotland) Act 1984<sup>26</sup> to be known as the homeowner housing committees in terms of section

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<sup>(25)</sup> 2014 asp 10.

<sup>(26)</sup> 1984 c.58

16(2) of the Property Factors (Scotland) Act 2011<sup>(27)</sup> when exercising functions conferred on them by virtue of section 16(1) of that Act;

the “hohcs functions” means the functions exercised by hohcs by virtue of section 16(1) of the Property Factors (Scotland) Act 2011;

the “hohp” means the panel constituted under Schedule 4 to the Rent (Scotland) Act 1984, to be known as the homeowner housing panel in terms of section 16(2) of the Property Factors (Scotland) Act 2011 when exercising functions conferred on it by virtue of section 16(1) of that Act; and

the “hohp functions” means the functions exercised by the hohp by virtue of section 16(1) of the Property Factors (Scotland) Act 2011.

### **Transfer of hohp functions and hohcs functions to First-tier Tribunal**

**61.**—(1) Subject to regulations 6 and 7, the hohp functions and the hohcs functions are transferred to the First-tier Tribunal Housing and Property Chamber, which shall act as a single decision making body (i.e. without any delegation to committees).

(2) The functions transferred by paragraph (1) shall be treated as subject to any necessary modifications so that they can be exercised by the First-tier Tribunal Housing and Property Chamber as a single decision making body.

### **Transfer of hohp members to First-tier Tribunal**

**62.**—(1) Subject to paragraph (3), members of the hohp under the age of 75 on the coming into force of these Regulations are transferred to and become members of the First-tier Tribunal Housing and Property Chamber, with legal members of the hohp becoming legal members of the First-tier Tribunal and non-legal members of the hohp becoming ordinary members of the First-tier Tribunal.

(2) Members of the hohp transferred to the First-tier Tribunal under paragraph (1) shall be subject to the provisions of schedules 7 and 8 to the 2014 Act, but otherwise shall be members of the First-tier Tribunal under their existing terms and conditions.

(3) A member of the hohp who is over the age of 70 on the coming into force of these Regulations shall transfer only if the Chamber President of the First-tier Tribunal Housing and Property Chamber has confirmed that the Chamber President considers it desirable in the public interest that the member shall remain in office. This period is able to be extended on an annual basis (until the member reaches the age of 75).

### **Dissolution of hohp**

**63.** On transfer of hohp functions under regulation 3(1) and transfer of hohp members under regulation 4(1), hohp is dissolved.

### **Transitional and savings provisions**

**64.** Schedule 1 to these Regulations contains transitional and savings provisions.

### **Application of hohp/hohc Procedural Rules in First-tier Tribunal**

**65.**—(1) Subject to paragraph (2), the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012<sup>(28)</sup> shall apply in respect of proceedings before the First-tier Tribunal Housing and Property Chamber when exercising the functions transferred to it by regulation 3(1).

(2) The reference in paragraph (1) to the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 is to those Regulations subject to the amendments set out in Part 1 of Schedule 2 to these Regulations.

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<sup>(27)</sup> 2011 asp 8.

<sup>(28)</sup> S.S.I. 2012/180.

(3) Part 2 of Schedule 2 to these Regulations sets out further provisions in respect of proceedings before the First-tier Tribunal Housing and Property Chamber when exercising the functions transferred to it by regulation 3(1).

**Consequential amendments and repeals**

**66.** The consequential amendments and repeals set out in Schedule 3 to these Regulations have effect.

St Andrew's House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government



## SCHEDULE 4

Regulation 6

### Transitional and savings provisions

#### **Proceedings pending before the hohp/the hohcs immediately before 1st September 2016 to transfer to First-tier Tribunal**

67. Any proceedings before the hohp/the hohcs which are pending immediately before 1st September 2016 shall continue on and after that date as proceedings before the First-tier Tribunal Housing and Property Chamber.

#### **Proceedings in progress before before the hohp/the hohcs on 1st September 2016 to transfer to First-tier Tribunal**

68. Any proceedings already in progress before the hohp/the hohcs on 1st September 2016 but not completed shall be transferred to and be completed by the First-tier Tribunal Housing and Property Chamber but with so far as possible the same persons hearing the case before the First-tier Tribunal Housing and Property Chamber as members of that body as were prior to 1st September 2016 hearing the case as members of the hohp/the hohcs.

#### **Decisions, directions and orders of the hohp/the hohcs to continue in force**

69. Any decision (whether or not called a decision), direction or order given or made in proceedings before the hohp/the hohcs which is in force immediately before 1st September 2016 remains in force on and after that date as if it were a decision, direction or order of the First-tier Tribunal Housing and Property Chamber.

#### **Time limits in respect of proceedings before the hohp/hohcs too carry over to First-tier Tribunal**

70. Any time limit which has started to run before these Regulations come into force in respect of proceedings before the hohp/the hohcs (and which has not expired) shall continue to apply where proceedings are transferred to the First-tier Tribunal Housing and Property Chamber.

#### **Unexercised right of appeal to sheriff, if exercised, appeal to Upper Tribunal**

71. Where in respect of a decision of the hohp/the hohcs before 1st September 2016, there lies a right of appeal to the sheriff, which has not been exercised before that date but is still exercisable, any appeal on or after 1st September 2016 shall be to the Upper Tribunal for Scotland as if the decision had been made by the First-tier Tribunal and the appeal shall be an appeal from the First-tier Tribunal for the purposes of section 46(1) of the 2014 Act.

#### **Discretion to dis-apply the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012**

72. Although, in terms of regulation 7, the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 shall apply in respect of proceedings before the First-tier Tribunal Housing and Property Chamber, the Scottish Tribunals may dis-apply any of those Regulations and make other directions if they consider this necessary to ensure that proceedings are dealt with fairly.

#### **Savings provision**

73. Where in respect of a decision of the hohp/the hohcs before 1st September 2016, there lies a right of appeal to the sheriff, which has been exercised before that date, the appeal to the sheriff is not affected by these Regulations.

**Part 1****Amendments to the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012**

**74.** The Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 are amended in accordance with paragraphs 2 to 29.

**Amendment of title**

**75.** In the title, for “Homeowner Housing Panel” substitute “First-tier Tribunal Housing and Property Chamber”.

**Amendment of regulation 2**

**76.** In regulation 2 —

- (a) omit definition of “committee”;
- (b) omit definition of “the panel”;
- (c) in the definition of “the president” for “the president of the panel” substitute Chamber President of the First-tier Tribunal for Scotland Housing and Property Chamber”;
- (d) in the appropriate place insert “First-tier Tribunal” means the First-tier Tribunal for Scotland Housing and Property Chamber”; and
- (e) omit paragraph (2).

**Amendment of regulation 3**

**77.** In regulation 3, for “the panel and any committee”, twice occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 4**

**78.** In regulation 4 —

- (a) in paragraphs (1) and (2) for “any committee” substitute “the First-tier Tribunal”; and
- (b) in paragraph (3) for “the panel and any committee” substitute “the First-tier Tribunal”.

**Amendment of title of Part 2**

**79.** For the title of Part 2, substitute “applications to the First-tier Tribunal”.

**Amendment of regulation 5**

**80.** In regulation 5(1) for “the panel” substitute “the First-tier Tribunal”.

**Amendment of regulation 7**

**81.** In regulation 7, for “the committee” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of Part 3**

**82.** Omit in Part 3 the two headings in italics.

**Amendment of regulation 8**

83. In regulation 8, for “the committee” wherever occurring including in the title, substitute “the First-tier Tribunal”.

**Amendment of regulation 9**

84. In regulation 9, for “the committee” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 10**

85. In regulation 10, for “the committee” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 11**

86. In regulation 11, for “the committee” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 12**

87. In regulation 12, for “the committee” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 13**

88. In regulation 13, for “the committee” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 14**

89. In regulation 14—

- (a) for “the committee” wherever occurring including in the title, substitute “the First-tier Tribunal”; and
- (b) for “the chairman” wherever occurring, substitute “the Chairing Member”.

**Amendment of regulation 15**

90. In regulation 15, for “the committee” and “the panel” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 16**

91. In regulation 16, for “committee” wherever occurring, substitute “First-tier Tribunal”.

**Amendment of regulation 17**

92. In regulation 17, for “the committee” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 18**

93. In regulation 18, for “the committee” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 19**

94. In regulation 19, for “the committee” wherever occurring, substitute “the First-tier Tribunal”.

**Amendment of regulation 20**

95. In regulation 20, for “the committee” substitute “the First-tier Tribunal”.

#### **Amendment of regulation 21**

96. In regulation 21, for “the committee” wherever occurring, substitute “the First-tier Tribunal”.

#### **Amendment of regulation 22**

97. In regulation 22, for “the committee” wherever occurring, substitute “the First-tier Tribunal”.

#### **Amendment of regulation 23**

98. In regulation 23, for “the committee” substitute “the First-tier Tribunal”.

#### **Amendment of regulation 24**

99. In regulation 24—

- (a) for “the committee” wherever occurring including in the title, substitute “the First-tier Tribunal”;  
and
- (b) for “the chairman”, wherever occurring including in the title, substitute “the chairing member”.

#### **Amendment of regulation 25**

100. In regulation 25—

- (a) in paragraph (1) for “may apply to the panel or, as the case may be, to the committee to be sisted as a party to the proceedings” substitute “may apply to the First-tier Tribunal to be sisted as a party to the proceedings”; and
- (b) in paragraph (2) for “the committee” substitute “the First-tier Tribunal”.

#### **Amendment of regulation 26**

101. In regulation 26—

- (a) for “the committee”, wherever occurring (other than in sub-paragraph (2)(b) (iii)), substitute “the First-tier Tribunal”;
- (b) for “the chairman”, wherever occurring, substitute “the chairing member”; and
- (c) in sub-paragraph (2)(b) (iii), for “another member of the committee” substitute “another member of the First-tier Tribunal who heard the case”.

#### **Amendment of regulation 28**

102. In regulation 28(2), for “any committee” substitute “the First-tier Tribunal”.

## **Part 2**

### **Further provisions in respect of proceedings before the First-tier Tribunal Housing and Property Chamber**

103. Paragraphs 31 to 34 set out further provisions which apply to proceedings before the First-tier Tribunal Housing and Property Chamber

#### **Reviews**

104.—(1) The First-tier Tribunal may review a decision (except an excluded decision) made by it in any matter in a case before it.

(2) A decision is reviewable at the First-tier Tribunal’s own instance or on the application of a party in the case.

(3) The exercise by the First-tier Tribunal of discretion whether or not a decision should be reviewed cannot itself give rise to a review or appeal.

(4) On review of a decision, the First-tier Tribunal may—

- (a) take no action;
- (b) set the decision aside; or
- (c) correct a minor or accidental error contained in the decision

(5) A decision is not reviewable under paragraph (1) more than once.

(6) The First-tier Tribunal must produce a written record of its decision made at a review.

#### **Time limits for permission to appeal – application to decision making forum**

**105.**—(1) For the purposes of the permissions mentioned in section 46(3)(a) of the Act (application for permission to appeal made to the First-tier Tribunal), the following time limit applies.

(2) An application for permission to appeal must be received by the First-tier Tribunal for Scotland within the period of 30 days from the relevant date.

(3) The relevant date is the later of—

- (a) the date on which the decision appealed against was sent to the appellant;
- (b) the date on which the statement of reasons for the decision was sent to the appellant.

#### **Time limits for permission to appeal – application to appellate forum**

**106.**—(1) For the purposes of the permission mentioned in section 46(3)(b) of the Act (application for permission to appeal made to the Upper Tribunal following refusal by the First-tier Tribunal), the following time limit applies.

(2) An application for permission to appeal must be received by the Upper Tribunal for Scotland, within the period of 30 days from the relevant date.

(3) The relevant date is the date on which notice of the First-tier Tribunal for Scotland's refusal of permission to appeal, was sent to the appellant.

#### **Expenses**

**107.**—(1) The First-tier Tribunal may award expenses against a party but only in a case where that party has through unreasonable behaviour in the conduct of a case has put the other party or party to unnecessary or unreasonable expense.

(2) Where expenses are awarded under paragraph(1) the amount of the expenses awarded and recoverable under that paragraph shall be the amount of expenses required to cover any unnecessary or unreasonable expenses incurred by the party in whose favour the order for expenses is made.

## SCHEDULE 6

Regulation 8

### Consequential provisions and repeals

#### **Amendment of the Property Factors (Scotland) Act 2011**

**108.** The Property Factors (Scotland) Act 2011 is amended in accordance with paragraphs 2 to 11.

#### **Amendment of section 8**

**109.** In subsection (2)(c)(ii) of section 8 (Removal from register) for “a homeowner housing committee” substitute “the First-tier Tribunal”.

#### **Amendment of section 17**

**110.** In section 17, for “homeowner housing panel” wherever occurring including in the title, substitute “First-tier Tribunal”.

#### **Amendment of section 18**

**111.** In section 18—

- (a) in the heading for “homeowner housing committee” substitute “First-tier Tribunal”;
- (b) in section 18(1)—
  - (i) omit “of the homeowner housing panel”; and
  - (ii) for “a homeowner housing committee” substitute “the First-tier Tribunal”; and
- (c) in regulation 18(3)(a), for “the panel’s” substitute “the First-tier Tribunal’s”.

#### **Amendment of section 19**

**112.** In section 19—

- (a) for “homeowner housing committee” wherever occurring including in the title, substitute “First-tier Tribunal”; and
- (b) for “the committee”, wherever occurring, substitute “the First-tier Tribunal”.

#### **Amendment of section 20**

**113.** In section 20—

- (a) in subsection 20(1)(a) for “the homeowner housing committee” substitute “the First-tier Tribunal”; and
- (b) in subsection 20(1)(b) for “the committee” substitute “the First-tier Tribunal”.

#### **Amendment of section 21**

**114.** In section 21—

- (a) for “the homeowner housing committee” substitute “the First-tier Tribunal”; and
- (b) for “the committee”, wherever appearing, substitute “the First-tier Tribunal”.

#### **Amendment of section 23**

**115.** In section 23—

- (a) for “the homeowner housing committee” substitute “the First-tier Tribunal”; and

- (b) for “the committee”, whenever appearing, substitute “the First-tier Tribunal”.

**Amendment of section 24**

- 116.** Section 24, for “the homeowner housing committee” substitute “the First-tier Tribunal”.

**Amendment of section 31**

- 117.** In section 31—

- (a) at the appropriate place, insert ““First-tier Tribunal” means the First-tier Tribunal for Scotland Housing and Property Chamber”; and
- (b) at the appropriate place, insert ““president” means the Chamber President of the First-tier Tribunal for Scotland Housing and Property Chamber”.

**Repeals of provisions of the Property Factors (Scotland) Act 2011**

- 118.** Sections 16, 22, 26 and 27 of the Property Factors (Scotland) Act 2011 are repealed.

## **EXPLANATORY NOTE**

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

These regulations make provision for the transfer in to the First-tier Tribunal for Scotland Housing and Property Chamber of the functions and members of the Homeowner Housing Panel and Homeowner Housing Committees.



**DRAFT REGULATIONS THAT DETERMINE THE COMPOSITION OF THE FIRST-TIER & UPPER TRIBUNAL FOR SCOTLAND WHEN HEARING CASES IN AND FROM THE HOUSING AND PROPERTY CHAMBER**

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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No.**

**TRIBUNALS AND INQUIRIES**

**The First-tier Tribunal for Scotland and Upper Tribunal for Scotland  
(Composition) Regulations 2016**

*Laid before the Scottish Parliament- 20 January 2016 -*

*Coming into force - - 1<sup>st</sup> September 2016*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 38(1) and 40(1) of the Tribunals (Scotland) Act 2014<sup>(29)</sup> (“the Act”) and all other powers enabling them to do so.

In accordance with section 79(2)(c) of the Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament. The Scottish Ministers have obtained the President of the Scottish Tribunals’ approval for the making of the Regulations in accordance with section 11(2) of the Act.

**119.Citation and commencement**

—(1) These Regulations may be cited as the First-tier Tribunal for Scotland and Upper Tribunal for Scotland (Composition) Regulations 2016.

These Regulations come into force on 1<sup>st</sup> September 2016.

**Composition of First-tier Tribunal for Scotland Housing and Property Chamber**

**2.** —The First-tier Tribunal for Scotland Housing and Property Chamber, when convened to decide any matter in a case, shall, at the discretion of the Chamber President of that chamber, consist of—

- (a) a legal member;
- (b) a legal member and one ordinary member; or
- (c) a legal member with two ordinary members.

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<sup>(29)</sup> 2014<sup>a</sup> sp 10.

### **Composition of Upper Tribunal for Scotland hearing appeals from First-tier Tribunal for Scotland Housing and Property Chamber**

3. — (1) Subject to paragraph (2), an appeal from the First-tier Tribunal for Scotland Housing and Property Chamber to the Upper Tribunal for Scotland shall be heard by a full time sheriff acting as a member of the Upper Tribunal, having been authorised so to act by the President of the Scottish Tribunals in terms of section 17(3) of the Act.

(2) Subject to paragraph (3), if the President of the Scottish Tribunals considers that the Chamber President of the First-tier Tribunal for Scotland Housing and Property Chamber has particular expertise in respect of the subject-matter of an appeal from the First-tier Tribunal for Scotland Housing and Property Chamber to the Upper Tribunal for Scotland, the President of the Scottish Tribunals may authorise the Chamber President to act as a member of the Upper Tribunal and hear the appeal either alone or with a sheriff, provided the Chamber President has had no involvement with the case prior to the appeal.

(3) Paragraph (2) does not apply to a Temporary Chamber President of the First-tier Tribunal for Scotland Housing and Property Chamber.

*PAUL WHEELHOUSE*

A member of the Scottish Government

St Andrew's House,  
Edinburgh

2016

#### **EXPLANATORY NOTE**

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

These regulations make provision as to the composition of the First-tier Tribunal for Scotland Housing and Property Chamber. It also makes provision as to the composition of the Upper Tribunal for Scotland when hearing appeals from the First-tier Tribunal for Scotland Housing and Property Chamber.

