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Justice Committee Comataidh a' Cheartais

First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019



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Justice Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



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The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019

Introduction

1. At its meeting on 29 January 2019 the Justice Committee considered the following draft instrument:

[The First-tier Tribunal for Scotland Housing and Property Chamber \(Incidental Provisions\) Regulations 2019](#)
2. The instrument was laid before the Parliament on 17 December 2018 and referred to the Justice Committee. The instrument is subject to the affirmative procedure.
3. The instrument is being laid before the Scottish Parliament under section 80(2)(a) of the Tribunals (Scotland) Act 2014 ('the 2014 Act'). This is a technical instrument seeking to make incidental provisions relating to functions or powers of the First-tier Tribunal Housing and Property Chamber.
4. The 2014 Act allows rules to be made to regulate the practice and procedure of both the First-tier and Upper Tribunals. Paragraph 4(2) of schedule 9 to the 2014 Act allows rules to be made by the Scottish Ministers until such time as responsibility for making Tribunal rules passes to the Scottish Civil Justice Council.
5. On 1 December 2017 most private rented sector civil cases transferred from the sheriff court to the First-tier Tribunal for Scotland Housing and Property Chamber by virtue of section 16 and Part 1 of schedule 1 of the Housing (Scotland) Act 2014.
6. A number of issues have come to light since the transfer of functions and jurisdiction from the sheriff court. The instrument provides for some technical amendments needed to address these issues to be made.
7. Regulations 2 and 6 amend—
 - the Debtors (Scotland) Act 1987 to permit the Tribunal to make time to pay directions, which previously were made only by the sheriff,
 - the Assured Tenancies (Notice to Quit Prescribed Information) (Scotland) Regulations 1988 to make reference to the Tribunal instead of the sheriff,
 - the Housing (Scotland) Act 1988 to refer to case management discussions as well as hearings,
 - the Removing from Heritable Property (Form of Charge) (Scotland) Regulations 2011 so that those Regulations apply to enforcement in relation to the Tribunal as well as in relation to the sheriff court, and

- the Bankruptcy and Diligence etc. (Scotland) Act 2007 so that the provisions apply to enforcement in relation to the Tribunal as well as in relation to the sheriff court.
8. Regulations 3 to 5 provide minor drafting changes in consequence of the new operational procedures which came into force on 1 December 2017.

Delegated Powers and Law Reform Committee consideration

9. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 8 January 2019 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.¹

Justice Committee consideration

10. At its [meeting on 29 January 2019](#), the Justice Committee took evidence on the instrument from Ash Denham, Minister for Community Safety and her officials.
11. The Minister outlined the purpose of the draft instrument, as well as the purpose of an associated negative instrument² which was also under consideration by the Committee. That instrument seeks to give effect to procedural changes to the First-tier Chamber for Scotland Housing and Property Chamber.
12. Clarification was sought on the number of cases remaining with the sheriff court, which have not been transferred to the First-tier Tribunal. Gaynor Davenport, from the Housing Services Policy Unit at the Scottish Government, responded to these questions. The Committee indicated it was content with that response.³
13. The Minister then moved the motion S5M-15300—That the Justice Committee recommends that the First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 [draft] be approved.
14. The motion was agreed to without debate or division.

Conclusions

15. The Justice Committee recommends to the Parliament that it approve the First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 [draft].

- 1 DPLR Committee, 8 January 2019, Minutes: https://www.parliament.scot/S5_Delegated_Powers/20190108Minutes.pdf
- 2 First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Amendment Regulations 2018 (SSI 2018/378).
- 3 Justice Committee, Official Report, 29 January 2019 (Cols 2 - 3):
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11914&mode=pdf>

