Draft Regulations laid before the Scottish Parliament under section 79(2)(a) and (b) and 80(2)(a) of the Tribunals (Scotland) Act 2014, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2016 No.

TRIBUNALS AND INQUIRIES

The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016

Made - - - -	*2016*
Coming into force - -	*1st December 2016*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 20(2), 28(2), 28(6), 79(1) and 80(1) of the Tribunals (Scotland) Act 2014(**a**) and all other powers enabling them to do so.

In accordance with section 11(1)(a) and (b) of that Act, the Scottish Ministers have obtained the Lord President's approval and have consulted such other persons as they considered appropriate.

In accordance with section 79(2)(a) and (b) and 80(2)(a) of that 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 Homeowner Housing Committees) Regulations 2016.

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

Interpretation

2. In these Regulations**—**

"the 2014 Act" means the Tribunals (Scotland) Act 2014;

"the hohcs" means the committees constituted in accordance with schedule 4 of the Rent (Scotland) Act 1984(**b**), to be known as the homeowner housing committees in terms of section 16(2) of the Property Factors (Scotland) Act 2011(**c**) when exercising functions conferred on them by virtue of section 16(1) of that Act; and

"the hohcs functions" means the functions exercised by hohcs by virtue of section 16(1) of the Property Factors (Scotland) Act 2011.

(**a**) 2014 asp 10.
(**b**) 1984 c.58.
(**c**) 2011 asp 8.

Transfer of hohcs functions to the First-tier Tribunal and abolition of hohcs

3.—(1) Subject to regulations 4 and 5, the hohcs functions are transferred to the First-tier Tribunal with allocation to the First-tier Tribunal Housing and Property Chamber.

(2) The hohcs are abolished.

Transitional and savings provisions

4. The transitional and savings provisions set out in schedule 1 of these Regulations have effect.

Consequential amendments

5. The consequential amendments set out in schedule 2 of these Regulations have effect.

Consequential amendments to the Property Factors (Scotland) Act 2011 Code of Conduct of Property Factors

6. The consequential amendments to the Property Factors (Scotland) Act 2011 Code of Conduct of Property Factors set out in schedule 3 of these Regulations have effect.

Name
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
Date

SCHEDULE 1

Regulation 4

Transitional and savings provisions

Applications to and proceedings in progress before the hohcs on 1st December 2016 to transfer to the First-tier Tribunal

1. Any applications referred to the hohcs before 1st December 2016 but not yet determined and any proceedings already in progress before that date involving hohcs shall be transferred to and be completed by the First-tier Tribunal but with so far as possible the same persons hearing and determining the case before the First-tier Tribunal as members of that tribunal as were prior to 1st December 2016 hearing the case as members of the hohcs.

Decisions, directions and orders of the hohcs to continue in force

2. Any decision (whether or not called a decision), direction or order given or made in applications to and proceedings before the hohcs which is in force immediately before 1st December 2016 remains in force on and after that date as if it were a decision, direction or order of the First-tier Tribunal.

Time limits in respect of applications to and proceedings before the hohcs to carry over to the First-tier Tribunal

3. Any time limit which has started to run before 1st December 2016 in respect of applications to and proceedings before the hohcs (and which has not expired) shall continue to apply where applications and proceedings are transferred to the First-tier Tribunal.

Unexercised right of appeal to sheriff, if exercised, to be appeal to the Upper Tribunal

4. Where in respect of a decision of the hohcs before 1st December 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 December 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.

Savings provision

5. Where in respect of a decision of the hohcs before 1st December 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 or the First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Panel) Regulations 2016(**a**).

(**a**) S.S.I. 2016/ .

SCHEDULE 2

Regulation 5

Consequential amendments of the Property Factors (Scotland) Act 2011

1. The Property Factors (Scotland) Act 2011 is amended in accordance with paragraphs 2 to 13.

2. In section 4 (registration)—

(a) in subsection (4)(b)(iv), for "a homeowner housing committee" substitute "the First-tier Tribunal"; and

(b) after subsection (8) insert—

"(9) In this Act, "First-tier Tribunal" means the First-tier Tribunal for Scotland Housing and Property Chamber."

3. In section 5 (section 4: considerations), in subsection (3)(b), for "a homeowner housing committee" substitute "the First-tier Tribunal".

4. In section 8 (removal from register), in subsection (2)(c), for "a homeowner housing committee" substitute "the First-tier Tribunal".

5. In section 18 (referral to homeowner housing committee), in subsection (1)(a), for "a homeowner housing committee" substitute "the First-tier Tribunal".

6. The title to section 18 becomes "**Referral to the First-tier Tribunal**".

7. In section 19 (determination by homeowner housing committee)—

(a) in subsection (1), for the words from "homeowner" to "must" substitute "First-tier Tribunal must, in relation to a homeowner's application referred to it under section 18(1)(a),";

(b) in subsection (2)—

(i) in the opening words—

(aa) for "committee" substitute "First-tier Tribunal";

(bb) for "they" substitute "it"; and

(ii) in paragraph (b), for "them" substitute "it";

(c) in subsection (3)—

(i) for "committee are" substitute "First-tier Tribunal is"; and

(ii) for "committee" where it subsequently occurs substitute "First-tier Tribunal";

(d) in subsection (4), for "homeowner housing committee" substitute "First-tier Tribunal".

8. The title to section 19 becomes "**Determination by the First-tier Tribunal**".

9. In section 20 (property factor enforcement orders)—

(a) in subsection (1)(a), for "homeowner housing committee" substitute "First-tier Tribunal"; and

(b) in subsection (1)(b), for "committee" substitute "First-tier Tribunal".

10. In section 21 (variation and revocation of property factor enforcement orders)—

(a) in subsection (1)—

(i) in the opening words, for the words from "The" to "order" substitute "Where the First-tier Tribunal has made a property factor enforcement order it";

(ii) in paragraph (a), for "they consider" substitute "it considers";

(iii) in paragraph (b), for "they consider" substitute "it considers";

(b) in subsection (2)—

(i) in the opening words, for "committee" substitute "First-tier Tribunal";

(ii) in paragraph (b), for "they think" substitute "it thinks";

(c) in subsection (3)—

(i) in paragraph (a), for "committee consider" substitute "First-tier Tribunal considers"; and

(ii) in paragraph (b)—

(aa) for "committee" in both places that it occurs substitute "First-tier Tribunal";

(bb) for "consider" in both places that it occurs substitute "considers"; and

(cc) for "have" substitute "has".

11. In section 23 (effect of failure to comply with property factor enforcement order)—

(a) in subsection (1)—

(i) for "homeowner housing committee" substitute "First-tier Tribunal"; and

(ii) for "committee" where it subsequently occurs substitute "First-tier Tribunal";

(b) in subsection (2)—

(i) for "committee" in both places that it occurs substitute "First-tier Tribunal"; and

(ii) for "decide" substitute "decides";

(c) in subsection (3)—

(i) in the opening words, for "committee" substitute "First-tier Tribunal"; and

(ii) in paragraph (b), for "committee are" substitute "First-tier Tribunal is";

(d) in subsection (4)—

(i) for "committee are" substitute "First-tier Tribunal is";

(ii) for "committee" where it subsequently occurs substitute "First-tier Tribunal"; and

(iii) for "they consider" substitute "it considers".

12. In section 24 (property factor enforcement order: offences), in subsection (4) for "homeowner housing committee" substitute "First-tier Tribunal" and for "have" substitute "has".

13. In section 31 (interpretation), after the definition of "applicant" insert—

""First-tier Tribunal" has the meaning given by section 4(9),".

SCHEDULE 3

Regulation 6

Consequential amendments to the Property Factors (Scotland) Act 2011 Code of Conduct of Property Factors

1. The Property Factors (Scotland) Act 2011 Code of Conduct of Property Factors, prepared under section 14(1) of the Property Factors (Scotland) Act 2011, laid before the Scottish Parliament on 30th April 2012 and brought into force on 1st October 2012 by the Property Factors (Code of Conduct) (Scotland) Order 2012(**a**), is amended as follows:

(a) in the Introduction—

(i) remove "and any homeowner housing committee"; and

(ii) for "a homeowner housing committee" substitute "the First-tier Tribunal Housing and Property Chamber"; and

(b) in section 4.2—

(i) remove "and referred to a homeowner housing committee"; and

(ii) for "committee" where it subsequently occurs substitute "tribunal".

(**a**) S.S.I. 2012/217.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the transfer to the First-tier Tribunal for Scotland of the functions of the Homeowner Housing Committees.

The First-tier Tribunal was set up by section 1 of the Tribunals (Scotland) Act 2014. It is divided into chambers, with the chambers hearing cases according to the subject-matter of the case. The First-tier Tribunal Housing and Property Chamber hears cases previously dealt with by the Homeowner Housing Committees.

These Regulations also make consequential amendments to the Property Factors (Scotland) Act 2011, largely substituting references to the Homeowner Housing Panel with references to the First-tier Tribunal, with similar amendments made to the Code of Conduct of Property Factors. Transitional provisions are made to manage the transfer of on-going casework. When this instrument comes into force on 1st December 2016, all applications to the Homeowner Housing Committees not yet determined transfer to the First-tier Tribunal, including applications not yet accepted as validly made.

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