



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

### RESPONDENT INFORMATION FORM

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

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

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

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 Do not publish response

#### Information for organisations:

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

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

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

- Yes  
 No

## QUESTIONNAIRE

### Questions on Part One

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

**Yes**  **No**

Part 1 of the legislation says 'An application to the First-tier Tribunal must be in writing and may be made using a form obtained from the First-tier Tribunal.' In order to help users we think that guidance is need to outline where the forms can be located, such as downloaded from the First-tier Tribunal website or obtained directly from the Chamber.

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

We do not have any comments on Part 2 about amendments to the existing rules for Homeowner applications.

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

**Yes**  **No**

If you are not content, please explain why?

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

**Yes**  **No**

If you are not content, please explain why?

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

**Yes**  **No**

If you are not content, please explain why?

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

Yes  No

If you are not content, please explain why?

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

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

Yes  No

If you do not agree, please explain why?

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

Yes  No

If you do not agree, please explain why?

The Regulations suggest mandatory provision of a Notice to Quit with an application for recovery of possession under section 18 of the Housing (Scotland) Act 1988 Act based on grounds for possession set out in Schedule 5 of that Act (for example by way of rent arrears). In terms of s18 (6) of the Housing (Scotland) Act 1988, when relying on certain Grounds under schedule 5 (grounds 2 & 8 in part 1 and all of the grounds in part 2 of Schedule 5) you do not always need to serve a Notice to Quit (see also Royal Bank of Scotland PLC V Boyle 1999 HousLR 42). The regulations should be amended to reflect that a Notice to Quit should only be produced where one is required.

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

Yes  No

If you do not agree, please explain why?

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

Yes X No

If you do not agree, please explain why?

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

We do not have any other comments on the operational procedures for jurisdictions due to transfer from the Sheriff Court under Chapters 6-10.

Questions on new jurisdictions

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

Yes X No

If you do not agree, please explain why?

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

Yes X No

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

The Scottish Government need to clarify whether a reason will be given as to why an application has been refused because this is currently not clear from the legislation.

### Questions on Part Two

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

Yes, we are content that there will be no provision for publicly funded legal assistance for procedure in respect of Letting Agent Applications in Chapter 5. This is because letting agents are businesses and should factor in these costs.

If you are not content, please explain why?

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

We do not agree that publicly funded legal assistance should be available for parties in respect of applications for Landlord Registration in Chapter 6.

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

If you do not agree, please explain why?

Landlords should factor any costs associated with the application process into their business plans.

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

ARLA Propertymark believe that if publicly funded legal assistance is made available for one party then it should be provided for both and alternatively if it is not provided to one side then the other party should not receive it either. As a result this will ensure the parties are on an equal footing procedurally and are able to participate in the proceedings.

Furthermore, because the First-Tier Tribunal is not the traditional adversarial court model there is a lesser role for legal representatives in such proceedings. We also understand that legal advice and assistance will be available from the Scottish Legal Aid Board through the 'Advice and Assistance' scheme for those who financially qualify. This will allow them to seek legal advice on the proceedings and issues around review and permission to appeal, not actual representation. Ultimately we think this gives a good balance between applicants getting advice on the issues for the First-Tier Tribunal and preparing their applications/response, whilst not imposing the cost of unnecessary representation onto the public purse.

Additionally, having solicitors present may actually hinder the First-Tier Tribunal's handling of cases as the likely consequence of their involvement will be an increase in advocacy by lawyers and legal submission, which the First-Tier Tribunal will be dealing with.

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

If you do not agree, please explain why?

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

Please refer to the answer we have provided in response to Question 17.

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

If you do not agree, please explain why?

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

Please refer to the answer we have provided in response to Question 17.

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

If you do not agree, please explain why?

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

Please refer to the answer we have provided in response to Question 17.

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

If you do not agree, please explain why?

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

Please refer to the answer we have provided in response to Question 17.

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

If you do not agree, please explain why?