

Delegated Powers and Law Reform Committee

4th Meeting, 2023 (Session 6)

Tuesday 31 January 2023

Instrument Responses

First-tier Tribunal for Scotland Housing and Property Chamber (Amendment) Regulations 2023 (SSI 2023/6)

On 19 January 2023, the Committee asked the Scottish Government:

1. The above named instrument is making amendments to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 to provide for a bespoke procedure relating to prescribed property costs applications and how they are handled. Should the title of the instrument as cited in regulation 1(1) of the instrument include “(Procedure)” before “(Amendment)”?
2. Regulation 2(9) of the instrument inserts a new Part 4 into the 2017 regulations. The newly inserted rule 114 in Part 4 of the 2017 regulations provides for modifications to the rules when prescribed property costs applications are being considered by the tribunal. Rule 114(7) modifies rule 26 (decisions of the First-tier Tribunal), but no modifications are made to rule 26(9) for such applications. Should the reference to “conducting the hearing” at the end of rule 26(9) also be omitted in respect of such applications?
3. Please confirm whether any corrective action is proposed, and if so, what action and when.

On 24 January 2023, the Scottish Government responded:

1. We agree that the title of the instrument should have been the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) (Amendment) Regulations 2023. The omission of “(Procedure)” from the title was an oversight, for which we apologise, but we are content that the title is not misleading and adequately highlights the purpose of the Regulations. As the Regulations amend the 2017 Regulations, the user will ultimately refer to the 2017 Regulations as amended and the title of the 2017 Regulations does include the word “Procedure”.
2. Rule 26(9) of the 2017 Regulations notes that in the absence of the chairing member, the chairing member’s functions may be carried out by another member of the Tribunal conducting the hearing. This rule was not modified in new rule 114(7) (as inserted by the current Regulations) as it was considered that it had no impact on prescribed property costs (“PPC”) applications where no hearing takes place. In PPC applications the chairing member is simply the member making the decision – rule 26(2) (as amended by the current regulations). If, at any time before the

decision is made, the chairing member is absent then the decision would be made by another member and that member making the decision becomes the chairing member under rule 26(2). As another member could step into the role of chairing member more easily in written proceedings, it was not considered that a modification of rule 26(9) was necessary.

3. In relation to the first issue, it would not be possible to amend the title of the Regulations via a correction slip or via further amendment regulations. As the omission does not create confusion as to the purpose of the Regulations, the Scottish Ministers consider that revoking the Regulations and re-laying regulations with an amended title would not be a proportionate means of addressing the problem. Accordingly, the Scottish Ministers do not propose to take any remedial action on this issue. In relation to the second issue, no remedial action is proposed as rule 26(9) doesn't impact on PPC applications.