



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 29 January 2019

Session 5



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Pàrlamaid na h-Alba

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JUSTICE COMMITTEE
4th Meeting 2019, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*John Finnie (Highlands and Islands) (Green)
*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)
*Daniel Johnson (Edinburgh Southern) (Lab)
*Liam Kerr (North East Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
Liam McArthur (Orkney Islands) (LD)
*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Gaynor Davenport (Scottish Government)
Ash Denham (Minister for Community Safety)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 29 January 2019

[The Convener opened the meeting at 10:00]

Subordinate Legislation

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

The Convener (Margaret Mitchell): Good morning and welcome to the Justice Committee's fourth meeting in 2019. We have apologies from Liam McArthur.

Agenda item 1 is consideration of the draft First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019, which is an affirmative instrument. I welcome Ash Denham, Minister for Community Safety, and her officials from the Scottish Government: Gaynor Davenport, housing services policy unit; and Kirsten Simonnet-Lefevre, directorate for legal services.

I refer members to paper 1, which is a note by the clerk, and invite the minister to make a short opening statement.

The Minister for Community Safety (Ash Denham): Good morning. I am pleased to be here to discuss two fairly technical instruments that will make the housing and property chamber of the First-tier Tribunal operate more efficiently, in line with the original policy intentions, to deliver the benefits of specialism, consistency and accessibility. That will also deliver improved access to justice for both tenants and landlords in the private rented sector.

I will give a little background on the development of the housing and property chamber of the First-tier Tribunal, followed by a summary of the two related instruments that are before the committee this morning.

The housing and property chamber was established in December 2016, when two existing housing panels transferred to the First-tier Tribunal, as part of the first phase of tribunal reform. The creation of the chamber saw the transfer of civil jurisdiction in relation to most private tenancy-related cases from the sheriff court to the First-tier Tribunal in December 2017. The First-tier Tribunal can now make orders, equivalent to the decrees previously made by sheriff courts. For example, sheriffs can make

orders to evict tenants, and the tribunal can now do the same.

The basis for raising a case and the matters to be taken into account also remain the same. Rules of procedure covering all types of civil cases in the new tribunal were made by virtue of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017, which are also known as the 2017 rules. The court transfer was a large-scale transfer under the Housing (Scotland) Act 2014. As the First-tier Tribunal gained operational experience of handling its new case load from the sheriff court, it identified some areas where legislation could be clarified.

My officials listened carefully to the views of the First-tier Tribunal and agreed that there were some areas where legislation could be amended to provide that clarification. The statutory instruments before the committee today are a direct response to the issues raised by the tribunal.

I now turn to the instruments themselves. The committee will come on to consider the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Amendment Regulations 2018 (SSI 2018/378), which is a negative instrument. The instrument amends the 2017 rules that set out the procedures of the housing and property chamber.

The affirmative instrument—the draft First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019—is needed to amend primary legislation. Subject to the approval of the committee, it will resolve some minor drafting matters and amend the Debtors (Scotland) Act 1987 and the Bankruptcy and Diligence etc (Scotland) Act 2007. It makes clear the procedures to be followed to make certain orders that were previously made in the sheriff court and are now made in the First-tier Tribunal, as a consequence of the transfer of civil jurisdiction.

That is a brief overview of the two sets of regulations that are before the committee today. I will be happy to answer any questions that members may have.

John Finnie (Highlands and Islands) (Green): Good morning, minister. On the policy objectives, the policy note says that, 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.”

Does it remain the case that not all cases have been transferred? Are any such cases still considered by the sheriff court?

Gaynor Davenport (Scottish Government): There are some cases still in the sheriff court,

such as those on houses in multiple occupation, which would require consultation with local authorities. That is the main category that I can think of.

We had a big consultation at the time, and we decided that it was best to leave the matter with the sheriff court and not involve HMOs in the large-scale transfer. However, that is not to say that HMOs will not transfer in the longer term.

John Finnie: What was the rationale behind that decision? I know that there can sometimes be a lot of controversy around HMOs, but why was it decided to leave them out of the transfer?

Gaynor Davenport: From memory, I think that, after we had spoken to local authorities—including perhaps the city councils such as Glasgow, Edinburgh and Dundee—and once the issue had been broken down and we had seen what would be necessary in procedural terms, the move was considered very expensive. Local authorities already carry out intensive scrutiny at committee stage, and the move would have been quite technical and complicated and would have been out of sync with the rest of the case load that we were transferring. I should point out that although local authorities were in no rush to do that, it is not something that we have said that we will not do. We have said that we will look at the matter in the longer term.

John Finnie: Thank you very much.

The Convener: As there are no further questions from members or comments from the minister, I move to agenda item 2, which is formal consideration of motion S5M-15300, on the affirmative instrument. The Delegated Powers and Law Reform Committee has considered and reported on the instrument and has made no comment on it.

Motion moved,

That the Justice Committee recommends that the First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 [draft] be approved.—[*Ash Denham*]

Motion agreed to.

The Convener: That concludes consideration of the affirmative instrument. The committee's report will note and confirm the outcome of the debate. Does the committee agree to delegate authority to me as convener to clear the final draft report?

Members indicated agreement.

The Convener: I suspend the meeting to allow the minister and her officials to leave.

10:07

Meeting suspended.

10:07

On resuming—

First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Amendment Regulations 2018 (SSI 2018/378)

The Convener: We come now to agenda item 3, which is consideration of the negative instrument. I refer members to paper 2, which is a note by the clerk.

If members have no comments, does the committee agree that it wishes to make no recommendation in relation to the instrument?

Members indicated agreement.

European Union (Withdrawal) Act 2018

Licensing (Amendment) (EU Exit) (Scotland) Regulations 2019 (SSI 2019/6)

10:08

The Convener: Under agenda item 4, the committee will consider whether a statutory instrument made under the powers conferred on the devolved authorities by the European Union (Withdrawal) Act 2018 has been laid under the appropriate procedure. I refer members to paper 3, which is a note by the clerk, and paper 4, which is a private paper. The instrument has been laid under the negative procedure, and the committee will consider its policy content at a future meeting.

If members have no comments, does the committee agree that the negative procedure is the appropriate procedure for this instrument?

Liam Kerr (North East Scotland) (Con): Do we prejudice our ability to make the same decision for any similar legislation in future by—

The Convener: No. Every instrument will be judged on its own merits.

Does the committee agree that the negative procedure is appropriate for the instrument?

Members indicated agreement.

The Convener: That concludes the public part of today's meeting. Our next meeting will be on 5 February, when the committee will discuss the petitions that it is currently considering and look at its forward work programme.

10:09

Meeting continued in private until 12:02.

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