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MOVING CASES UNDER THE MOBILE HOMES ACT 1983 FROM THE COURTS TO THE FIRST TIER TRIBUNAL FOR SCOTLAND

We wanted to make contact with the Law Society of Scotland to provide an update on the [Housing \(Scotland\) Bill](#), which has now completed Stage 2 of consideration and to ask for input to work in preparation for Stage 3. We need to gather information from stakeholders fairly quickly and would welcome an initial response on the questions in this letter by close on 23 July. If it is not possible for you to meet that deadline but you would still like to contribute, please let us know. We would be very happy to meet for a discussion and record your views if you would rather do this than fill in a form.

Update on the Housing (Scotland) Bill

You will recall that, following consultation, the Housing (Scotland) Bill included provisions at commencement to change the basis of pitch fee uprating under the Mobile Homes Act 1983 (1983 Act) from RPI to CPI. These remain unchanged and will be implemented once the Bill has completed its passage.

In addition, at Stage 2 of the Bill process, the Local Government and Housing Committee considered and agreed a non-government amendment, brought by Murdo Fraser MSP, which amends the 1983 Act. The amendment has the effect of moving decisions on disputes under the Mobile Homes Act 1983 to the First Tier Tribunal for Scotland (FTT) instead of the Sheriff Court, where they are currently heard. It also removes the option of disputes being resolved by an arbiter, if the parties agree to this. The relevant text can be found at Part 6, Section 47A of the [Housing \(Scotland\) Bill](#).

Next Steps

Scottish Government agrees with the policy intent of the amendment in seeking to improve access to justice for residents of mobile homes. Concerns raised by residents about resolving disputes under the 1983 Act through the courts include the complexity of the process, difficulty in finding a solicitor and cost implications. There is a strong precedent for similar cases to be heard by a Tribunal. Cases under the Mobile Homes Act 1983 are heard by a tribunal in both England and Wales and the Housing and Property Chamber of the FTT already hears cases relating to private rented sector housing in Scotland.

The Bill will now proceed to Stage 3 for final consideration by MSPs, who will vote in a debate in the Scottish Parliament. The Stage 3 debate provides an opportunity for further amendment to make sure the Bill gives effect to the intention of the amendment, with no unintended consequences. As we prepare for Stage 3, we would like to hear your views on the amendment and its implications

Once the Housing Bill has passed, further secondary legislation will be necessary to implement this change. We will need to undertake a consultation to inform this and implementation plans so there will be a further chance to comment on points of detail when that consultation takes place.

Disputes under the Mobile Homes Act 1983

There are a number of possible types of questions which may arise under the 1983 Act and which are currently heard by the Sherrif Court. The amendment moves all of these cases to the First Tier Tribunal:

- Enforcement of the requirement on the owner to provide a written statement required by section 1;
- Applications under section 2 (within 6 months of it being made) to vary or delete any express term of the agreement, provide that an express term that is not enforceable as it was not in the written statement, have full or such effect subject to variation as the order provides, or that the agreement should have implied in it terms concerning the matters in Part 2 of Schedule 1;
- An application under Schedule 1 by an owner to terminate an agreement at a date decided by a court on an occupier's breach of a term of the agreement, failure to occupy the mobile home as only or main residence or due to the condition of the mobile home having a detrimental effect on the amenity of the site (the court can terminate the agreement or order repairs);
- An application to station the mobile home on another pitch if the court is satisfied that the other pitch is broadly comparable and it is reasonable for the mobile home to be stationed there;
- An application for determination of a pitch fee.
- Any other dispute under the Act.

Policy issues under consideration prior to Stage 3

These questions are about who can resolve the different types of disputes under the 1983 Act. In particular, want to understand if there are reasons why particular types of cases should not be moved from the Courts to the First Tier Tribunal.

Arbitration - We are considering the implications of the change for arbitration.

Question 1: Are you aware of arbitration being used to settle disputes under the Mobile Homes Act 1983?

Yes ☐

No ☐

Please add any comments below to explain your answer:

We have no specific comments in relation to arbitration.

Question 2: Do you think that arbitration should be an option if parties agree to it instead of a case being heard by the FTT? Please tick as appropriate:

Yes ☐

No ☐

Please add any comments below to explain your answer:

We have no specific comments in relation to arbitration.

Eviction cases - While mobile homes cases are already decided by a tribunal in England and Wales, decisions on the termination of pitch agreements (eviction cases) have remained with the Courts. One main reason identified in the consultation by the UK Government on this issue was that parties may be able to access Legal Aid for court cases but cannot usually for tribunal cases. It was thought that representation was particularly important when eviction is being considered. In Scotland, evictions cases from social rented housing are heard by the courts and from private rented housing by the FTT. An exception has been made to allow for legal aid to be paid for private rented sector evictions cases. We are investigating whether Legal Aid could be made available in a similar way for mobile homes eviction cases in the FTT.

Question 3: Do you think that evictions cases should be moved from the Courts to the FTT if Legal Aid can be made available?

Please tick as appropriate:

Yes ☐

No ☐

Question 4: Do you think that evictions cases should be moved from the Courts to the FTT if Legal Aid cannot be made available?

Please tick as appropriate:

Yes ☐

No ☒

Question 5: Are there any other cases under the 1983 Act that you think need special consideration before they are moved from the Courts to the FTT?

Please add any comments below to explain your answers.

Whilst we understand and in principle welcome the policy intention of moving cases under the Mobile Homes Act 1983 from the courts to the First Tier Tribunal for Scotland, namely to improve accessibility and reduce cost barriers for individuals, we do have some concerns regarding the practical impacts of such a change.

In relation to legal aid, if cases are to be moved to the First Tier Tribunal, it is essential that legal aid should also be made available for the Tribunal so that parties are able to access legal advice and representation to uphold their rights. Eviction cases should only be so transferred if equivalent legal aid can be guaranteed, given the impact these decisions can have on people's homes and lives.

However, consideration should also be given to the practical challenges of solicitors providing representation in a separate tribunal setting. Where cases are heard in court, a solicitor may have several cases calling within the same court on the same day. Travelling to a separate tribunal location for a single hearing may create practical difficulties for the solicitor and, on current legal aid rates, may be uneconomical. Whilst we understand that the tribunal may hear cases by telephone or video conferencing, this can also create practical challenges in terms of solicitor availability and access to suitable technology. If parties are unable to find a solicitor who is able to take on their case on a legal aid basis in the tribunal, this will not meet the policy intention of improving access to justice.

Whilst it is not specified on the face of the Bill, we would anticipate that cases relating to mobile homes would be heard by the Housing and Property Chamber of the First Tier Tribunal. This Chamber already has a significant workload, with considerable waits for hearing to be fixed. Consideration should also be given to the possibility that lower procedural barriers could result in a higher number of claims. We would welcome clarification on what additional resources will be made available to ensure that the Tribunal can deal with this additional responsibility- for example by the recruitment of additional members. We would also welcome clarification on the safeguards which will be in place to manage increased volume or potential misuse of process. The policy intention of improving access to justice could be undermined if cases in the tribunal were subject to delay.

Equality Impacts – The aim of the amendment is to make it easier for parties to bring cases under the 1983 Act by reducing the process and cost barriers to pursuing a case. The [Equality Impact Assessment](#) that was completed for the Housing (Scotland) Bill identified that mobile homes residents are more likely to be older, to have a disability or to be from the Gypsy/Traveller community. We therefore think that there will be a positive impact on these equalities groups as a result of mobile homes cases moving to the FTT.

Question 6 – Do you agree with our assessment that cases under the 1983 Act being heard by the FTT rather than the courts is likely to benefit equalities groups?

Please tick as appropriate:

Yes ☐

No ☐

Please add any comments below to explain your answer or give more information on how equalities groups will be affected.

Subject to our comments above regarding the practical impacts of the proposals and the need to address these in order to ensure that the policy intention is not undermined, we do agree in principle that cases under the 1983 Act being heard by the FTT rather than the courts may benefit equalities groups. However to support this, clear mechanisms should be in place to promote accessibility – including digital support, guidance, and interpreter services.

Impact on Businesses – We want to understand the impact of the amendment on businesses. The aim of the amendment is to make it easier for parties to bring cases under the 1983 Act by reducing the process and cost barriers to pursuing a case. This could apply to both residents and site operators. It could also increase the overall number of cases brought.

Question 7: What do you think will be the impacts on businesses of cases under the 1983 Act being heard by the FTT rather than the courts?

We have no further comments.

Question 8: Please tell us about anything else that you think we should take into account in this work.

We have no further comments.