

SCHEDULE

The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

PART 1

Rules common to all proceedings before the First-tier Tribunal

Application and interpretation

1.—(1) Part 1 of the Rules applies to all proceedings before the First-tier Tribunal.

(2) In these Rules—

“the 1984 Act” means the Rent (Scotland) Act 1984;

“the 1988 Act” means the Housing (Scotland) Act 1988;

“the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004;

“the 2006 Act” means the Housing (Scotland) Act 2006;

“the 2011 Act” means the Property Factors (Scotland) Act 2011;

“the 2011 Regulations” means the Tenancy Deposit Schemes (Scotland) Regulations 2011;

“the 2014 Act” means the Housing (Scotland) Act 2014;

“the 2016 Act” means the Private Housing (Tenancies) (Scotland) Act 2016;

“adjourn” means, in relation to a hearing, a decision by the First-tier Tribunal to suspend after it has begun and continue on a later date;

“appeal” means the exercise of a right of appeal under section 46 of the Tribunals Act;

“application” means an application made to the First-tier Tribunal and includes an assured tenancy reference and a regulated tenancy reference and “applicant” is to be construed accordingly;

“assured tenancy reference to the First-tier Tribunal” means—

- (a) a reference by a landlord or a tenant under section 17(3) of the 1988 Act of a notice which has been served under section 17(2) of that Act (notice proposing terms of a statutory assured tenancy and, if appropriate, an adjustment of the rent to take account of the proposed terms);
- (b) a reference by a tenant under section 24(3) of the 1988 Act of a notice which has been served under section 24(1) of that Act (notice proposing an increase in rent under an assured tenancy);
- (c) a reference by a tenant under section 25A(4)(a) of the 1988 Act of a notice which has been served on the tenant under section 25A(2) of that Act (notice proposing a new rent to take account of any sums payable by the tenant to the landlord in respect of council tax); or
- (d) an application by a tenant under section 34(1) of the 1988 Act (application for a determination of the rent which the landlord might reasonably be expected to obtain under a short assured tenancy);

“case management discussion” includes any resumed discussion;

“chairing member” means the chairing member of the First-tier Tribunal and is the legal member where a hearing is heard by two or more members;

“Chamber President” means Chamber President of the First-tier Tribunal;

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“electronic communication” has the meaning given to it by section 15(1) of the Electronic Communications Act 2000(1) and “electronic signature” has the same meaning as in section 7 of that Act(2);

“First-tier Tribunal” means the First-tier Tribunal for Scotland Housing and Property Chamber;

“hearing” includes an oral hearing, any hearing conducted in whole or in part by video link, telephone or other means of instantaneous communication and any resumed hearing;

“interested party” means a person other than the applicant or any other party on whom the First-tier Tribunal has ordered the proceedings before it to be served;

“lay representative” means a representative of a party who is not a legal representative;

“party” includes, unless the context requires otherwise, any homeowner, property factor, tenant, former tenant, landlord, former landlord, third party applicant, former residential occupier, lessor, lessee, letting agent and any other person permitted by the First-tier Tribunal to be a party to proceedings;

“postpone” means, in relation to a hearing, a decision by the First-tier Tribunal to defer to a date later than that originally set by the First-tier Tribunal;

“proceedings” means the proceedings in relation to the making of a decision under these Rules;

“regulated tenancy reference” means a matter which is referred by a rent officer to the First-tier Tribunal under paragraph 7 or 12 of schedule 5 of the 1984 Act or an application for a certificate of fair rent which is referred by a rent officer to the First-tier Tribunal under paragraph 2 or 6 of schedule 6 of the 1984 Act or a Part VII contract;

“representative” means a lay representative or a legal representative of a party;

“review” means the internal review provided for by section 43(1) of the Tribunals Act;

“the Tribunals Act” means the Tribunals (Scotland) Act 2014; and

“writing” includes electronic communication which has been recorded and is consequently capable of being reproduced; and this applies also to “written”.

The overriding objective

2.—(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.

(2) Dealing with the proceedings justly includes—

- (a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;
- (b) seeking informality and flexibility in proceedings;
- (c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party’s case without advocating the course they should take;
- (d) using the special expertise of the First-tier Tribunal effectively; and
- (e) avoiding delay, so far as compatible with the proper consideration of the issues.

Effect of the overriding objective

3.—(1) The Chamber President and the First-tier Tribunal must seek to give effect to the overriding objective when—

- (a) exercising any power under these Rules; and

(1) 2000 c.7. Section 15(1) is amended by the Communications Act 2003 (c.21), schedule 17, paragraph 158.

(2) Section 7 is amended by S.I. 2016/696.

(b) interpreting any rule.

(2) In particular the Chamber President and the First-tier Tribunal must manage the proceedings in accordance with the overriding objective.

(3) The parties must assist the Chamber President or the First-tier Tribunal to further the overriding objective.

Application

4. An application to the First-tier Tribunal must be in writing and may be made using a form obtained from the First-tier Tribunal.

Requirements for making an application

5.—(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) The application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.

Service

6.—(1) Where any formal communication requires to be served on any person, it is deemed to be served if—

(a) it is sent to the proper address of the person—

(i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000⁽³⁾); or

(ii) by a postal service which provides for the delivery to be recorded; or

(b) it is sent to the email address provided by the person.

(2) Where a formal communication is served as mentioned in paragraph (1) it is to be taken to have been received 48 hours after it is sent unless—

(a) the proper address is outwith the United Kingdom; or

(b) the contrary is shown.

(3) Where any formal communication requires to be served upon the parties, it is deemed to have been served on a party if it is served on a person who is acting as the representative of that party.

(4) A member of staff of the Scottish Courts and Tribunals Service may send a formal communication on behalf of the First-tier Tribunal.

(3) 2000 c.26.

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(5) Where a party, a representative or an interested party provides an email address, the First-tier Tribunal is to communicate using that address until the party, representative or interested party requests that another method of communication be used.

Signature of document

7. A requirement in these Rules for a document to be signed by a person is satisfied, in the case of a document which is transmitted by electronic communication in accordance with these Rules, by electronic signature of the person who is required to sign the document.

Rejection of application

8.—(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if—

- (a) they consider that the application is frivolous or vexatious;
- (b) the dispute to which the application relates has been resolved;
- (c) they have good reason to believe that it would not be appropriate to accept the application;
- (d) they consider that the application is being made for a purpose other than a purpose specified in the application; or
- (e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision.

Notification of acceptance of application

9.—(1) Where rule 8 does not apply, the First-tier Tribunal must, as soon as practicable, give notice to each party—

- (a) setting out the detail of the application in such manner as the First-tier Tribunal thinks fit; and
 - (b) specifying the day by which any written representations must be made.
- (2) The day specified for the purposes of paragraph (1)(b)—
- (a) must be at least 14 days after the day on which the notice is given; and
 - (b) may, at the request of any party, be changed to such later day as the First-tier Tribunal thinks fit.
- (3) The First-tier Tribunal must notify each party of a change mentioned in paragraph (2)(b).

Representatives

10.—(1) A party may be represented in any proceedings by a representative whose details must be notified to the First-tier Tribunal prior to any hearing.

(2) A party may disclose any document or communicate any information about the proceedings to that party's lay representative or legal representative without contravening any prohibition or restriction on disclosure of the document or information.

(3) Where a document or information is disclosed under paragraph (2), the representative is subject to any prohibition or restriction on disclosure in the same way that the party is.

(4) A practice direction, an order, or anything permitted or required to be done by a party under these Rules, may be done by a lay representative, except the signing of an affidavit or precognition.

(5) The First-tier Tribunal may order that a lay representative is not to represent a party if—

- (a) it is of the opinion that the lay representative is an unsuitable person to act as a lay representative (whether generally or in the proceedings concerned); or
- (b) it is satisfied that to do so would be in the interests of the efficient administration of justice.

(6) Where a representative begins to act for a party after the application is made, the representative must immediately notify the First-tier Tribunal and any other party of that fact.

(7) Where a representative ceases to act for a party, the representative or the party must immediately notify the First-tier Tribunal and any other party of that fact, and give details of any new representative (if known).

Supporters

11.—(1) A party who is an individual may be accompanied by another individual to act as a supporter.

(2) A supporter may assist the party by—

- (a) providing moral support;
- (b) helping to manage tribunal documents and other papers;
- (c) taking notes of the proceedings;
- (d) quietly advising on—
 - (i) points of law and procedure;
 - (ii) issues which the party might wish to raise with the First-tier Tribunal.

(3) A party may show any document or communicate any information about the proceedings to that party's supporter without contravening any prohibition or restriction on disclosure of the document or information.

(4) Where a document or information is disclosed under paragraph (3), the supporter is subject to any prohibition or restriction on disclosure in the same way that the party is.

(5) A supporter may not represent the party.

(6) The First-tier Tribunal may order that a person is not to act as a supporter of a party if—

- (a) it is of the opinion that the supporter is an unsuitable person to act as a supporter (whether generally or in the proceedings concerned); or
- (b) it is satisfied that to do so would be in the interests of the efficient administration of justice.

Hearing two or more applications together

12.—(1) The First-tier Tribunal may direct two or more applications to be heard together where they are under consideration by the First-tier Tribunal at the same time and relate to the same—

- (a) property;
- (b) required work;
- (c) property factor;
- (d) letting agent; or
- (e) landlord.

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(2) The First-tier Tribunal may require the parties to take any steps necessary to enable two or more applications to be heard together.

Amendment to a party's written representations

13.—(1) Subject to rule 14, a party may amend their written representations—

- (a) any time up to 7 working days prior to the date fixed for a hearing; or
- (b) within 7 working days prior to the date fixed for the hearing or during the hearing, with the consent of the First-tier Tribunal and on such conditions, if any, as the First-tier Tribunal thinks fit.

(2) Such amendment must—

- (a) be in writing unless it is made during the hearing, in which case the terms of the amendment may be stated orally in the presence of any other party and noted by the First-tier Tribunal; and
- (b) comply with any requirement in an enactment which would have applied if the amendment had been included in the application.

(3) On receipt of a written amendment, the First-tier Tribunal must intimate the amendment to the other party in writing unless the amendment was made orally during the hearing in accordance with paragraph (2)(a).

(4) In this rule “working day” means any day except a Saturday or Sunday or a bank holiday in Scotland under section 1 of the Banking and Financial Dealings Act 1971(4).

Amendment raising new issues

14.—(1) Where the effect of any amendment of the written representations under rule 13(1)(a) by the party would be to introduce a new issue, such amendment may only be made with the consent of the First-tier Tribunal and on such conditions, if any, as the First-tier Tribunal thinks fit.

(2) Where an application is amended to include a new issue, any other party must be given an opportunity to make written representations in response to the amendment, or request the opportunity to make oral representations, by a date specified by the First-tier Tribunal which is not less than 14 days from the date on which—

- (a) intimation of the amendment is served; or
- (b) the amendment was made orally during the hearing in accordance with rule 13(2)(a).

(3) The party mentioned in paragraph (1) may also make further written representations or request the opportunity to make oral representations, by the date specified under paragraph (2).

(4) The date by which such representations must be made may, at the request of either party, be changed to such later day as the First-tier Tribunal thinks fit.

(5) The First-tier Tribunal must notify all parties of any change under paragraph (4).

(6) Where written representations are amended to include a new issue and the other party requests further time to comply with any duty under an enactment, then, the First-tier Tribunal must allow such further time as it considers reasonable.

Withdrawal of an application

15.—(1) An application may be withdrawn by an applicant at any time—

- (a) orally at a hearing; or

(4) 1971 c.80.

(b) by notifying the First-tier Tribunal and any other party.

(2) When notifying under paragraph (1)(b), the notice of withdrawal must be in writing and may be made on a form obtained from the First-tier Tribunal.

Directions

16.—(1) On its own initiative or on the application of a party, the First-tier Tribunal may give directions to the parties relating to the conduct or progress of the application.

(2) Directions may be given orally or in writing and must be intimated to every party.

(3) Directions of the First-tier Tribunal may, in particular—

(a) relate to any matter concerning the preparation for a hearing;

(b) set time limits for something to be done;

(c) vary any time limit given in a previous direction;

(d) provide for—

(i) a matter to be dealt with as a preliminary issue;

(ii) a party to provide further details of that party's case, or other information or document which appears to be necessary, in the opinion of the First-tier Tribunal, for the determination of the application;

(iii) witnesses to be heard; and

(iv) the manner in which evidence is to be given; and

(e) require a party to lodge and serve—

(i) a statement of evidence to be put forward at the hearing;

(ii) a paginated and indexed bundle of all the documents to be relied on by that party at the hearing;

(iii) a skeleton argument which summarises the submissions to be made at the hearing and cites all the authorities to be relied on, clearly identifying any particular passages to be relied on; and

(iv) a list of witnesses the party wishes to call to give evidence.

(4) When making directions the First-tier Tribunal must take into account the ability of parties to comply with the directions.

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

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- (d) discussing what witnesses, documents and other evidence will be required;
 - (e) discussing whether or not a hearing is required; and
 - (f) discussing an application to recall a decision.
- (4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
 - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
 - (ii) to do so will not be contrary to the interests of the parties; and
- (b) must make a decision without a hearing where the decision relates to—
 - (i) correcting; or
 - (ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

Mediation

19. In cases identified by the Chamber President as suitable for mediation, the First-tier Tribunal must—

- (a) bring to the attention of the parties the availability of mediation at any point in the proceedings as an alternative procedure for the resolution of the dispute;
- (b) provide information explaining what mediation involves; and
- (c) if the parties consent to mediation, adjourn or postpone the hearing in accordance with rule 28 to enable the parties to access mediation.

Inquiries

20.—(1) The First-tier Tribunal may make such inquiries as it thinks fit for the purpose of exercising its functions.

- (2) Inquiries may be made about matters other than those to which the application relates.
- (3) Inquiries may include—
 - (a) consideration of any written representation made in good time (under paragraph (4)) by or on behalf of the parties;
 - (b) where an oral hearing takes place, hearing any oral representation made by or on behalf of the parties; and
 - (c) consideration of any report instructed by the First-tier Tribunal about any of the matters referred to in the application.
- (4) A representation is in good time if it is received—
 - (a) by the day specified in the notice given under rule 9(1)(b);
 - (b) by the day specified in a notice given under rule 9(2)(b); or

- (c) later than the day mentioned in paragraph (a) or (b), if the First-tier Tribunal is satisfied that the party has a reasonable excuse.

Powers of the First-tier Tribunal to require production of evidence

21.—(1) The First-tier Tribunal may require any person—

- (a) to attend a hearing of the First-tier Tribunal at such time and place as the First-tier Tribunal may specify for the purposes of giving evidence; and
- (b) to give the First-tier Tribunal, by such day as it may specify, such documents or information as it may reasonably require.

(2) Paragraph (1) does not authorise the First-tier Tribunal to require any person to answer any question or to disclose anything which the person would be entitled to refuse to answer or disclose on grounds of confidentiality in civil proceedings in a court in Scotland.

(3) Where the First-tier Tribunal has set time limits for the lodging and serving of written evidence under rule 22(1), it must not consider any written evidence which is not lodged or served in accordance with those time limits unless satisfied that there is good reason to do so.

(4) Where a party seeks to rely upon a copy of a document as evidence, the First-tier Tribunal may require the original document to be produced.

Lodging of documents etc.

22.—(1) Except as otherwise provided in these Rules, or as otherwise specified by the First-tier Tribunal, a party must send to the First-tier Tribunal no later than 7 days prior to any hearing notified under rule 24(1)—

- (a) a list of any documents and copies of the documents that the party wishes to rely upon; and
- (b) a list of any witnesses that the party wishes to call to give evidence.

(2) Before allowing a document to be lodged late, the First-tier Tribunal must be satisfied that the party has a reasonable excuse.

Documents at hearings

23.—(1) Where the application is to be subject to a hearing, the First-tier Tribunal must take all reasonable steps to ensure that there is sent to each of the parties at least 3 days before the date of the hearing, a copy of, or sufficient extracts from, or particulars of, each document relevant to the application which has been received from a party (other than a document which is in the possession of such party or of which that party has previously been sent a copy).

(2) Paragraph (1) does not apply to assured tenancy references⁽⁵⁾.

Hearings

24.—(1) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a hearing (including any adjourned or postponed hearing) and any changes to the date, time and place of a hearing.

(2) The notice period for a hearing must be no less than 14 days from the date of receipt of the notice, unless the parties consent to a shorter period or there are urgent or exceptional circumstances.

(3) A hearing must be held in public unless the First-tier Tribunal, on its own initiative or on an application by a party, decides that it is necessary to do otherwise in the interests of justice.

(4) Subject to any direction of the First-tier Tribunal, at a hearing—

(5) See rule 62 for documents at hearings in respect of assured tenancy references.

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- (a) a party or a party's representative may conduct the party's case;
 - (b) the parties will be heard in such order and, subject to the provisions of these Rules, according to such procedure as the First-tier Tribunal determines; and
 - (c) a party may make representations, call witnesses, give evidence on his or her own behalf and cross-examine any witness called by another party.
- (5) The First-tier Tribunal may exclude from the hearing a person who is to appear as a witness until such time as that person gives evidence if it considers it is fair in all the circumstances to do so.

Duties of chairing member at a hearing

25. The chairing member must take reasonable steps to—

- (a) introduce to the parties the members of the First-tier Tribunal conducting the hearing;
- (b) explain the purpose of the hearing; and
- (c) ensure that the parties to the hearing—
 - (i) understand; and
 - (ii) can participate in,

the proceedings.

Decisions of the First-tier Tribunal

26.—(1) Where there are two or more members, the decision of the First-tier Tribunal, must be made by majority but in the event of a tie, the chairing member has a casting vote.

(2) Where the decision is made without a hearing, the one member of the First-tier Tribunal making the decision in accordance with rule 18 is deemed to be the chairing member for the purposes of this rule.

(3) The decision must be recorded in a document signed by the chairing member.

(4) In relation to applications mentioned in Part 2 and Chapters 2, 3, 5 and 7 of Part 3 of these Rules, a statement of reasons must be prepared by the chairing member with the assistance of the other members of the First-tier Tribunal (if any).

(5) Paragraph (4) does not apply where the First-tier Tribunal makes a decision which relates to—

- (a) correcting or reviewing a decision made by the First-tier Tribunal; or
- (b) a preliminary issue dealt with following a direction under rule 16(3)(d)(i).

(6) In relation to applications mentioned in Chapters 4, 6 and 8 to 12 of Part 3 of these Rules, a statement of reasons may be prepared by the chairing member with the assistance of the other members of the First-tier Tribunal (if any) who conducted the hearing.

(7) If the First-tier Tribunal does not provide written reasons for a decision in relation to an application mentioned in paragraph (6), a party may request written reasons within 14 days of the date of issue of the decision and the First-tier Tribunal must provide these.

(8) Where the decision of the First-tier Tribunal is not unanimous, the chairing member must give a brief note of the opinion of the minority.

(9) In the absence or incapacity of the chairing member, the chairing member's functions under this rule may be carried out by another member of the First-tier Tribunal conducting the hearing.

(10) A decision of the First-tier Tribunal with a statement of reasons (if prepared) or note given under paragraph (8) must be published.

Dismissal of a party's case

27.—(1) The First-tier Tribunal must dismiss the whole or a part of the proceedings if the First-tier Tribunal does not have jurisdiction in relation to the proceedings or that part of them.

(2) The First-tier Tribunal may dismiss the whole or part of the proceedings if the applicant has failed to—

- (a) comply with an order which stated that failure by the applicant to comply with the order could lead to the dismissal of the proceedings or part of them; or
- (b) co-operate with the First-tier Tribunal to such an extent that the First-tier Tribunal cannot deal with the proceedings justly and fairly.

Adjournment or postponement of a hearing

28.—(1) The First-tier Tribunal at its discretion may, on its own initiative or on an application by a party, at any time, adjourn or postpone a hearing.

(2) Where a party applies for an adjournment or postponement of a hearing, that party must—

- (a) if practicable, notify all other parties of the application for an adjournment or postponement;
- (b) show good reason why an adjournment or postponement is necessary; and
- (c) produce evidence of any fact or matter relied on in support of the application for an adjournment or postponement.

(3) The First-tier Tribunal may only adjourn or postpone a hearing at the request of a party on cause shown.

(4) If the reason for such an adjournment or postponement is to allow the party more time to produce evidence, the First-tier Tribunal may only adjourn or postpone the hearing if satisfied that—

- (a) the evidence relates to a matter in dispute;
- (b) it would be unjust to determine the case without permitting the party to produce the evidence; and
- (c) where the party has failed to comply with directions for the production of the evidence, the party has provided a satisfactory explanation for that failure.

Hearing case in the absence of a party

29. If a party or party's representative does not appear at a hearing, the First-tier Tribunal, on being satisfied that the requirements of rule 24(1) regarding the giving of notice of a hearing have been duly complied with, may proceed with the application upon the representations of any party present and all the material before it.

Recall

30.—(1) In relation to applications mentioned in Chapters 4, 6, 8, 11 and 12 of Part 3 of these Rules, a party may apply to the First-tier Tribunal to have a decision recalled where the First-tier Tribunal made the decision in absence because that party did not take part in the proceedings, or failed to appear or be represented at a hearing following which the decision was made.

(2) An application by a party to have a decision recalled must be made in writing to the First-tier Tribunal and must state why it would be in the interests of justice for the decision to be recalled.

(3) An application for recall may not be made unless a copy of the application has been sent to the other parties at the same time.

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(4) Subject to paragraph (5), an application for recall must be made by a party and received by the First-tier Tribunal within 14 days of the decision.

(5) The First-tier Tribunal may, on cause shown, extend the period of 14 days mentioned in paragraph (4).

(6) A party may apply for recall in the same proceedings on one occasion only.

(7) An application for recall will have the effect of preventing any further action being taken by any other party to enforce the decision for which recall is sought until the application is determined under paragraph (9).

(8) A party may oppose recall of a decision by—

(a) lodging with the First-tier Tribunal a statement of objection within 10 days of receiving the copy as required under paragraph (3); and

(b) sending a copy of the statement to any other party,

at the same time.

(9) After considering the application to recall and any statement of objection, the First-tier Tribunal may—

(a) grant the application and recall the decision;

(b) refuse the application; or

(c) order the parties to appear at a case management discussion where the First-tier Tribunal will consider whether to recall the decision.

Death, insolvency or incapacity of a party

31.—(1) Where a party dies, becomes insolvent, or becomes subject to a legal incapacity, while an application is under consideration, a person claiming to represent that party or that party's estate may apply to be a party to the cause under rule 32(3).

(2) For the purposes of paragraph (1) a person is insolvent if—

(a) the person's estate is sequestered;

(b) the person has granted a trust deed for creditors;

(c) the person is the subject of any other kind of arrangement analogous to those described in sub-paragraphs (a) and (b), anywhere in the world; or

(d) the person is a non-natural person who has been wound up or in receivership.

(3) The First-tier Tribunal may continue to consider and determine the application despite the death, insolvency or legal incapacity of any party.

Addition, substitution and removal of parties

32.—(1) The First-tier Tribunal may make an order adding, substituting or removing a party to the proceedings, including where—

(a) the wrong person has been named as a party; or

(b) the addition, substitution or removal has become necessary because of a change in circumstances since the start of proceedings.

(2) If the First-tier Tribunal makes an order under paragraph (1), it may give such consequential orders as it considers appropriate.

(3) A person who is not a party may make a written application to the First-tier Tribunal to be added or substituted as a party under this rule.

Absence of a member of the First-tier Tribunal

33. If, at or after the beginning of a hearing, a member of the First-tier Tribunal other than the chairing member is absent, the hearing may be conducted by the chairing member sitting alone or alongside another member and in that event the hearing will be deemed to be properly constituted.

Exclusion of persons disrupting proceedings

34.—(1) Without prejudice to any other powers it has, the First-tier Tribunal may exclude from any hearing or part of it any person (including a party, a representative or a supporter)—

- (a) whose conduct has disrupted the hearing or is likely, in the opinion of the First-tier Tribunal, to disrupt the hearing; or
- (b) whose presence is likely, in the opinion of the First-tier Tribunal, to make it difficult for any other person to make representations or present evidence necessary for the proper conduct of the hearing.

(2) In deciding whether to exercise the power conferred by paragraph (1) the First-tier Tribunal must, apart from other considerations, have regard to—

- (a) the interests of the parties; and
- (b) in the case of the exclusion of a party or a representative of a party, whether the party will be adequately represented and whether alternative measures could be put in place.

(3) If the First-tier Tribunal decides to exclude a party it must allow the representative of that party sufficient opportunity to consult the party.

Prohibition on recording of proceedings by parties

35. The First-tier Tribunal may prohibit photography, or any audio or visual recording of the proceedings, except in so far as is required to make reasonable adjustments to accommodate the disability of a party or a party's representative or supporter.

Correction of clerical mistakes and accidental slips or omissions

36. The First-tier Tribunal may at any time correct any clerical mistake or other accidental slip or omission contained in a decision, order or any document produced by it, by—

- (a) sending notification of the amended decision or order, or a copy of the amended document to all parties; and
- (b) making any necessary amendment to any information published in relation to the decision, order or document.

Application for permission to appeal a decision of the First-tier Tribunal

37.—(1) A person must make a written application to the First-tier Tribunal for permission to appeal.

(2) An application under paragraph (1) must—

- (a) identify the decision of the First-tier Tribunal to which it relates;
- (b) identify the alleged point or points of law on which the person making the application wishes to appeal; and
- (c) state the result the person making the application is seeking.

(3) No application to appeal may be made in relation to—

- (a) a decision arising from a review by the First-tier Tribunal under rule 39(1);

Status: This is the original version (as it was originally made).

- (b) rule 58(f);
- (c) section 7 (apportionment of the rateable value by the sheriff where the dwelling-house forms part of lands and heritages) of the 1984 Act;
- (d) section 97 (change of circumstances affecting a tenant who shares accommodation with persons other than landlord which are deemed to be rent increases) of the 1984 Act;
- (e) section 85B(6) (application by a local authority for an extension of the time limit for determining an application for landlord registration) of the 2004 Act;
- (f) section 28A (landlord application to exercise right of entry) of the 2006 Act;
- (g) section 66A (appeals in relation to the right to adapt rented houses for a disabled person or for energy efficiency under section 52) of the 2006 Act;
- (h) paragraph 3 of schedule 5 (warrants for ejection to enforce house in multiple occupation amenity notices) of the 2006 Act;
- (i) section 33 (time limit for determining application for registration as a letting agent) of the 2014 Act; or
- (j) section 29 (First-tier Tribunal’s power to set rent) of the 2016 Act.

First-tier Tribunal’s consideration of application for permission to appeal

38.—(1) The First-tier Tribunal must decide whether to give permission to appeal on any point of law.

(2) The First-tier Tribunal must provide a record of its decision to the parties and any interested party as soon as reasonably practicable.

(3) If the First-tier Tribunal refuses permission to appeal on any point of law, it must provide its decision—

- (a) a statement of its reasons for such a refusal; and
- (b) notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the method by which, such an application must be made.

Review of a decision

39.—(1) The First-tier Tribunal may either at its own instance or at the request of a party review a decision made by it except in relation to applications listed in rule 37(3)(b) to (j)(7), where it is necessary in the interests of justice to do so.

(2) An application for review under section 43(2)(b) of the Tribunals Act must—

- (a) be made in writing and copied to the other parties;
- (b) be made within 14 days of the date on which the decision is made or within 14 days of the date that the written reasons (if any) were sent to the parties; and
- (c) set out why a review of the decision is necessary.

(3) If the First-tier Tribunal considers that the application is wholly without merit, the First-tier Tribunal must refuse the application and inform the parties of the reasons for refusal.

(4) Except where paragraph (3) applies, the First-tier Tribunal must notify the parties in writing—

(6) Section 85B is not yet in force.

(7) Section 43(4) of the Tribunals (Scotland) Act 2016 (asp 10) provides that the exercise of discretion whether a decision should be reviewed cannot give rise to a review under section 43.

- (a) setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing; and
 - (b) may at the discretion of the First-tier Tribunal, set out the First-tier Tribunal's provisional views on the application.
- (5) In accordance with rule 18, the decision may be reviewed without a hearing.
- (6) Where practicable, the review must be undertaken by one or more of the members of the First-tier Tribunal who made the decision to which the review relates.
- (7) Where the First-tier Tribunal proposes to review a decision at its own instance, it must inform the parties of the reasons why the decision is being reviewed and the decision will be reviewed in accordance with paragraph (4) (as if an application had been made and not refused).
- (8) A review by the First-tier Tribunal in terms of paragraph (1) does not affect the time limit of 30 days in regulation 2(1) of the Scottish Tribunals (Time Limits) Regulations 2016⁽⁸⁾ for making an application for permission to appeal.

Expenses

40.—(1) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense.

(2) Where expenses are awarded under paragraph (1) the amount of the expenses awarded under that paragraph must be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made.

Enforcement of decisions

41. An order in pursuance of a decision of the First-tier Tribunal or a copy of such an order certified by the First-tier Tribunal may be enforced as if it were an extract registered decree bearing a warrant for execution issued by the sheriff court.

⁽⁸⁾ S.S.I. 2016/231.