

Draft Regulations laid before the Scottish Parliament under section 191(4A) of the Housing (Scotland) Act 2006 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2015 No.

HOUSING

The Private Rented Housing Panel (Landlord Applications) (Scotland) Regulations 2015

Made - - - - 2015

Coming into force - - 1st December 2015

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 28B(1) and 28C(11) of the Housing (Scotland) Act 2006(1) and all other powers enabling them to do so.

In accordance with section 191(4A) of that Act(2), a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Private Rented Housing Panel (Landlord Applications) (Scotland) Regulations 2015 and come into force on 1st December 2015.

Interpretation

2.—(1) In these Regulations—

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

“application” means an application under section 28A of the Act;

“the landlord’s right of entry” means the landlord’s right of entry to the house concerned under section 181(4) of the Act;

“the panel” means the private rented housing panel; and

“the panel member” has the meaning given by section 28A(2) of the Act(3).

(1) 2006 asp 1. Sections 28B and 28C are inserted by section 35(4) of the Private Rented Housing (Scotland) Act 2011 (asp 14) (“the 2011 Act”).
(2) Subsection (4A) is inserted by section 35(8) of the 2011 Act.
(3) Section 28A is inserted by section 35(4) of the 2011 Act.

(2) In these Regulations where any formal communication requires to be served upon a party it is deemed to have been served on that party if it is served on a person who is acting as the representative of that party.

(3) An officer of the panel appointed in accordance with Schedule 4 to the Rent (Scotland) Act 1984(4) may send a formal communication on behalf of the panel or the panel member.

(4) Any requirement in these Regulations for a document to be signed by a person is satisfied, in the case of a document which is transmitted by electronic communication, by electronic signature of the person who is required to sign the document.

(5) For the purposes of paragraph (4)—

“electronic communication” has the meaning given to it by section 15 of the Electronic Communications Act 2000 (general interpretation)(5); and

“electronic signature” has the same meaning as in section 7 of that Act.

Applications to the panel

3.—(1) An application must be made by written notice, and may be made on a form obtained from the panel offices.

(2) The application must state—

- (a) the name and address of the landlord;
- (b) that the application is made under section 28A of the Act;
- (c) the address of the house in respect of which the application is made;
- (d) the name, address and profession of any representative appointed by the landlord;
- (e) a telephone number to enable contact to be made with the landlord or any representative appointed by the landlord and any email address which may be used for such contact;
- (f) the landlord registration number of the landlord or that an application for registration has been made in accordance with section 83 of the Antisocial Behaviour etc. (Scotland) Act 2004(6) and has not been determined;
- (g) the name, telephone number (if known), and email address (if known) of the tenant;
- (h) that the tenant has been notified in writing that the landlord wishes to exercise the landlord’s right of entry;
- (i) that entry to the house is sought for the purpose of paragraph (a) of section 181(4) of the Act or of paragraph (b) of that section or of both;
- (j) whether or not the landlord has, within the 12 months prior to the date of making of the application, made another application under section 28A of the Act in respect of the same house; and
- (k) the name of any person the landlord intends to authorise to enter the house.

(3) The application must be signed and dated by the landlord or by any representative appointed by the landlord.

(4) The application must be accompanied by—

- (a) a copy of the lease or the tenancy agreement or, if these are not available, as much information about the tenancy as the landlord can give; and

(4) 1984 c.58.

(5) 2000 c.7. Section 15(1) was amended by section 406(1) of, and paragraph 158 of Schedule 17 to, the Communications Act 2003 (c.21).

(6) 2004 asp 8.

- (b) a copy of the notification referred to in paragraph (2)(h) and any subsequent correspondence relating to that notification.

Representation

4.—(1) A landlord or tenant may act in person or be represented by a person appointed by the landlord or the tenant, as the case may be, in connection with anything that these Regulations require or permit the landlord or tenant to do.

(2) Where a representative begins to act for a party, the representative must immediately notify the panel and the other party of that fact.

(3) Where a representative ceases to act for a party, the representative or the party must immediately notify the panel and the other party of that fact, and of the name and address of any new representative, if known.

Withdrawal of applications

5.—(1) A landlord wishing to withdraw an application may do so at any time by serving written notice of withdrawal on the tenant and the panel.

(2) The notice of withdrawal, may be made on a form obtained from the panel offices.

Rejection of applications

6.—(1) The panel member must decide to reject an application if—

- (a) the panel member considers that the application is frivolous or vexatious;
- (b) the dispute to which the application relates has been resolved or the landlord has been able to enter the house for the purpose specified in the application;
- (c) the panel member has good reason to believe that it would not be appropriate to assist either the landlord or any person the landlord intends to authorise to enter the house, or both, to gain entry to the house;
- (d) the panel member considers that the application is being made for a purpose other than a purpose specified in section 181(4) of the Act; or
- (e) the landlord has previously made an identical or substantially similar application in relation to the same house and in the panel member's opinion there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(2) Where the panel member makes a decision under section 28A(3) of the Act to reject an application the notification to the landlord under that section must state—

- (a) the name of the tenant and the address of the house;
- (b) the reason for the decision; and
- (c) that in terms of section 28A(8) of the Act the decision is final.

Person authorised to enter

7. If the panel member does not consider the person the landlord intends to authorise to enter the house to be a suitable person then the panel member may allow the landlord to amend the application in this regard.

Decision to assist

8. Where the panel member decides to assist the landlord under subsection (3) of section 28A of the Act, the notice sent to the landlord and the tenant under subsection (5) of that section must, in addition to the information required under that subsection, state—

- (a) the name and address of the landlord;
- (b) the name and address of the landlord’s representative, if any;
- (c) the name of the tenant and the address of the house;
- (d) the name of any person the landlord intends to authorise to enter the house;
- (e) whether the landlord is seeking entry to the house for the purpose of—
 - (i) viewing its state and condition for the purpose of determining whether the house meets the repairing standard;
 - (ii) carrying out any work necessary to comply with the duty in section 14(1)(b) of the Act; or
 - (iii) both;
- (f) that if the tenant (without reasonable excuse) fails or refuses, within a reasonable time, to—
 - (i) respond to the panel member; or
 - (ii) agree a suitable date and time (or dates and times) for the landlord to exercise the landlord’s right of entry;

the panel member may fix a date and time (or dates and times) for the landlord to exercise the landlord’s right of entry.

Stopping assistance

9. Where the panel member makes a decision to stop assisting the landlord under section 28A(7) or section 28C(9) of the Act the panel member must notify the landlord and the tenant and that notice must state—

- (a) the name and address of the landlord;
- (b) the name and address of the landlord’s representative, if any;
- (c) the name of the person the landlord intended to authorise to enter the house;
- (d) the name of the tenant and the address of the house;
- (e) the reason for the decision; and
- (f) that in terms of section 28A(8) of the Act the decision to stop assisting the landlord is final.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make further provision about the making of applications by landlords to the private rented housing panel under section 28A of the Housing (Scotland) Act 2006 (“the 2006 Act”) and about the deciding of those applications. The Regulations also make further provision about the actions that the panel member is to take under section 28C of that Act.

Regulation 3 sets out the information an application must contain and the documentation that must accompany it before it can be considered a valid application by the panel. The application must be signed and dated by the landlord or any representative appointed by the landlord. Regulation 2(4) allows for electronic signature where the application is transmitted by electronic communication (which is permitted by virtue of section 187 of the 2006 Act).

Regulation 4 permits both the landlord and tenant to be represented and requires notification of that fact to the panel and the other party.

In terms of regulation 5 a landlord can withdraw their application at any time by written notice to the panel and the tenant.

Regulation 6 sets out the grounds on which a panel member must reject an application. Where the panel member rejects the application, paragraph (2) means that the notice must set out the reasons for the decision.

If the landlord has indicated in the application that they wish to authorise another person to enter the house and the panel member does not consider that person to be a suitable person the panel member may in terms of regulation 7 permit the landlord to amend the application e.g. to substitute a different person.

Regulation 8 sets out additional information which must be contained in a notice under section 28A(5) of the 2006 Act.

Regulation 9 requires the panel member to send a notice to both the landlord and tenant if the panel member decides to stop assisting the landlord under section 28A(7) or 28C(9) of the 2006 Act and makes provision about the content of the notice.