
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 180

The Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

PART 3

Process of the application

Action by the committee

Hearing applications together

9.—(1) Where two or more applications by the same homeowner relating to the same property factor are pending at the same time, the committee may direct them to be heard together.

(2) Where two or more applications by different homeowners relating to the same property factor are pending at the same time, the committee may direct them to be heard together.

(3) The committee may require the parties to take any steps necessary to enable two or more applications to be heard together.

Inquiries

10.—(1) The committee may make such inquiries as they think fit for the purpose of exercising their functions under the Act.

(2) Inquiries may be made about matters other than those to which the application relates.

(3) Inquiries must include—

- (a) consideration of any timeous written representation made by or on behalf of the homeowner and the property factor;
- (b) where an oral hearing takes place, hearing any oral representation made by or on behalf of the homeowner or the property factor; and
- (c) consideration of any report instructed by the committee about any of the matters referred to in the application.

(4) A representation is timeous if it is received—

- (a) by the day specified in the notice given under regulation 8(1)(c);
- (b) where a later day is specified in a notice given under regulation 8(2)(b), by that later day; or
- (c) by such later date if the committee are satisfied that there is good reason for the delay.

Evidence

11.—(1) The committee may, for the purposes of making inquiries, require the property factor, the homeowner or any other person—

- (a) to attend a hearing of the committee, at such time and place as the committee may specify, for the purposes of giving evidence;

(b) to give the committee, by such day as they may specify, such documents or information as they may reasonably require.

(2) Paragraph (1) does not authorise the committee 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 the Court of Session.

(3) Where the committee have set time limits for the lodging and serving of written evidence, they 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 committee may require the original document to be produced.

Lodging of documents etc.

12.—(1) Except as otherwise provided in these Regulations or as specified by the committee, a party must send to the panel no later than 7 days prior to any hearing—

- (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) Where a party seeks to rely upon a document not produced in accordance with paragraph (1), the committee may allow the document to be lodged if they are satisfied that there is good reason to do so.

(3) In determining whether to allow a document to be lodged late, the committee will have regard to whether to do so is fair in all the circumstances.

Directions

13.—(1) Except as otherwise provided for in these Regulations, the committee may at any time either on their own initiative, or on the application of any party, give directions to the parties relating to the conduct or progress of the proceedings.

(2) Directions may be given to any party but must be intimated to all parties and may be given orally or in writing.

(3) Directions of the committee may, in particular—

- (a) relate to any matter concerning the preparation for a hearing;
- (b) specify the length of time allowed for something to be done;
- (c) vary any time limit in directions previously given by the committee for anything to be done by a party;
- (d) provide for—
 - (i) a particular matter to be dealt with as a preliminary issue;
 - (ii) a party to provide further details of that party's case, or any other information or document which appears to be necessary for the determination of the application;
 - (iii) the witnesses, if any, to be heard;
 - (iv) the manner in which any evidence is to be given;
- (e) require any party to lodge and serve—
 - (i) a statement of any evidence which is to be given at a hearing;
 - (ii) a skeleton argument which summarises any submission which is to be made at a hearing and cites all the authorities which will be relied on, identifying any particular passages to be relied upon.

(4) When making directions the committee must take into account the ability of parties to comply with the directions.

Correction of documents issued by the committee

14.—(1) The chairman (or in the event of the chairman's absence or incapacity, another member of the committee) has the power, by a certificate, to correct any clerical error or omission in any document issued by the committee.

(2) Where an order, notice of decision or statement of reasons is amended under paragraph (1), the committee must give an amended version to the party or parties to whom the committee gave the original document.

Withdrawal of the application

15.—(1) A homeowner may withdraw an application at any time in accordance with paragraph (2) or (3).

(2) Where an application has not been referred to a committee, the homeowner must notify the panel, the property factor and any other party (or representative) in writing of the withdrawal of the application.

(3) Where an application has been referred to a committee, the homeowner may withdraw an application orally at a hearing or, otherwise, notify the committee, the property factor and any other party (or representative) in writing of the withdrawal of the application.

Inspections

16.—(1) An inspection of the land to which the application relates may be made at any time during the proceedings.

(2) The committee may make or commission such further inspections as they consider appropriate to enable them to determine whether or not the property factor has complied with a property factor enforcement order.

(3) Any such second or subsequent inspection may be carried out by the full committee, or by one member alone, or by any person authorised by the committee to carry out such an inspection.

(4) The committee must give such notice in writing as they deem sufficient of an inspection to the party or parties and must allow each party and the representative of each party to attend any such inspection.

Hearings

17.—(1) A committee must give not less than 14 days' notice in writing to the parties of the date, time and place appointed for any hearing.

(2) A hearing must be held in public unless the committee, on an application by any party or on their own cause, decide that it is necessary to do otherwise to ensure a fair hearing.

(3) The committee may hold a hearing and receive evidence by telephone, through a video link or by using any other method of communication if the committee are satisfied that this would not prejudice the administration of justice and that there is no important public interest consideration which requires a hearing in person.

(4) At a hearing—

- (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 Regulations, according to such procedure as the committee determines;

(c) a party may make representations, lead or produce evidence, and question any witness called by any other party.

(5) The committee may exclude from the hearing any person who is to appear as a witness until such time as that person gives evidence if they consider it is fair in all the circumstances to do so.

(6) The committee at their discretion may on their own motion, or at the request of any party, at any time and from time to time postpone or adjourn a hearing, subject to regulation 21.

(7) The committee must give to the parties such notice of any postponed or adjourned hearing as they deem to be reasonable in the circumstances.

Power to determine the proceedings without an oral hearing

18.—(1) Subject to paragraph (2), the committee may make a decision under section 19(1), 21(1) or 23(1) of the Act (including any preliminary issue) without an oral hearing if—

- (a) the parties agree in writing to dispense with an oral hearing;
- (b) the committee consider that, having regard to the nature of the issues raised in the proceedings, sufficient evidence is available to enable them to come to a decision; and
- (c) to do so will not, in the view of the committee, be contrary to the interests of the parties.

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

Exclusion of persons disrupting proceedings

19.—(1) Without prejudice to any other powers they may have, the committee may exclude from any hearing, or part of it—

- (a) any person (including a party or a representative of a party) whose conduct has disrupted the hearing or is likely, in the opinion of the committee, to disrupt the hearing; and
- (b) any such person whose presence is likely, in the opinion of the committee, to make it difficult for any 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 committee 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.

(3) If the committee decides to exclude a party they must allow the representative of that party sufficient opportunity to consult the party.

Prohibition of recording of proceedings by parties

20. The committee may prohibit photography, or any audio or visual recording of a hearing, except in so far as is required for the purpose of making reasonable adjustments to accommodate the disability of any party or any party's representative.

Adjournment of a hearing on an application by a party

21.—(1) Where a party requests an adjournment of a hearing, the party must—

- (a) if practicable, notify all other parties of the application for adjournment;
- (b) show good reason why an adjournment is necessary; and

- (c) produce evidence of any fact or matter relied upon in support of the application for adjournment.
- (2) The committee must not adjourn a hearing at the request of any party unless they are satisfied that they cannot otherwise deal with the proceedings justly.
- (3) The committee must not adjourn a hearing on the application of a party in order to allow the party more time to produce evidence, unless satisfied that—
 - (a) the evidence relates to a matter in dispute;
 - (b) it would be unjust to decide the case without permitting the party a further opportunity 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.

Amendment

22.—(1) No application may be amended to refer to any failure by the property factor which is not referred to in the notification from the homeowner to the property factor for the purposes of section 17(3)(a) of the Act.

(2) Any party may amend that party's application or written representations relating to the proceedings only with the consent of the committee and on such conditions as the committee think fit.

(3) Except where paragraph (4) applies, where amendment is allowed by the committee, the committee must intimate the amendment in writing to the other party as soon as practicable.

(4) Where amendment is allowed by the committee in the course of a hearing, the terms of the amendment can be made orally in the presence of the other party and noted by the committee.

Hearing case in the absence of a party

23. If a party does not appear at a hearing the committee, on being satisfied that the requirements of regulation 17(1) regarding the giving of notice of a hearing have been duly complied with, may proceed to make a decision upon the representations of any party present and all the material before them.

Absence of a member of the committee

24. If, at or after the beginning of a hearing, a member of the committee other than the chairman is absent, the hearing may, with the consent of the parties, be conducted by the chairman and the remaining member and in that event the committee will be deemed to be properly constituted.

Death or incapacity of a homeowner or property factor

25.—(1) Where a homeowner or property factor dies or becomes subject to a legal incapacity while the proceedings are pending, any person claiming to represent that party or that party's estate may apply to the panel or, as the case may be, to the committee to be sisted as a party to the proceedings.

(2) The committee may continue to consider the proceedings despite the death or legal incapacity of the homeowner or the property factor and may allow that representative or successor to be sisted as a party to the proceedings.

Decision

26.—(1) This regulation applies to any decision of the committee under section 19(1), 21(1) or 23(1) of the Act.

- (2) Any decision of a committee—
 - (a) must be reached by majority but, where the committee are constituted by two members, the chairman has a second or casting vote; and
 - (b) must be recorded in writing in a document which—
 - (i) contains a full statement of the facts found by the committee and the reasons for their decision;
 - (ii) refers to the right of appeal under section 22(1) of the Act; and
 - (iii) is signed by the chairman (or, in the event of absence or incapacity of the chairman, by another member of the committee).
- (3) The committee must, as soon as reasonably practicable, make a decision by giving notice of the decision to—
 - (a) the property factor (or representative);
 - (b) the homeowner (or representative); and
 - (c) any other party.
- (4) Such a notice must be accompanied by—
 - (a) the document mentioned in paragraph (2)(b);
 - (b) any property factor enforcement order; and
 - (c) any report which the committee considered before making the decision.
- (5) The decision of the committee and a statement of reasons will be made publicly available.

Signature of documents

27. 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 in accordance with these Regulations, by electronic signature of the person who is required to sign the document.

Transitional

28.—(1) Subject to paragraph (2), no application may be made for determination of whether there was a failure before 1st October 2012 to carry out the property factor's duties.

(2) The president and any committee may take into account any circumstances occurring before 1st October 2012 in determining whether there has been a continuing failure to act after that date.