

2012 No. 180

PROPERTY FACTORS

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

Made - - - - - *29th May 2012*

Laid before the Scottish Parliament *31st May 2012*

Coming into force - - - *1st October 2012*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 25 and 30(2) of the Property Factors (Scotland) Act 2011(a) and all other powers enabling them to do so.

In accordance with paragraph 24(1) and (3) of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007(b), they have consulted the Administrative Justice and Tribunals Council and it has consulted its Scottish Committee.

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 and come into force on 1st October 2012.

Interpretation

2.—(1) In these Regulations—

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

“application” means an application under section 17(1) of the Act;

“committee” means a homeowner housing committee(c);

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

(a) 2011 asp 8 (“2011 Act”).

(b) 2007 c.15. The private rented housing panel (whose functions are extended by section 16(1) of the 2011 Act) is a listed tribunal by virtue of SSI 2007/436.

(c) Homeowner housing committees are constituted under Schedule 4 to the Rent (Scotland) Act 1984 (c.58), and given additional functions and re-named for the purposes of the 2011 Act by section 16(2) of that Act.

(d) 2000 c.7. Section 15(1) was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

“hearing” includes any resumed hearing;

“homeowner’s concern” means the homeowner’s reason for considering that the property factor has failed to carry out the property factor’s duties or, as the case may be, to comply with the section 14 duty;

“the panel” means the homeowner housing panel(a);

“party” includes the homeowner, the property factor and any person sisted as a party to the proceedings;

“the president” means the president of the panel;

“the proceedings” means the proceedings in relation to the making of a decision under section 19(1), 21(1) or 23(1) of the Act (including any preliminary issue); and

“writing” includes electronic communication which has been recorded and is consequently capable of being reproduced; and cognate expressions are to be construed accordingly.

(2) References in these Regulations to a committee include references to any successor committee constituted in accordance with Schedule 4 to the Rent (Scotland) Act 1984(b) and the Act.

The overriding objective

3.—(1) The overriding objective of these Regulations is to enable the panel and any committee to deal with the proceedings justly.

(2) Dealing with the proceedings justly includes—

- (a) dealing with the proceedings in ways which are proportionate to the complexity of the issues and to the resources of the parties;
- (b) seeking informality and flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are on an 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 panel and the committees effectively; and
- (e) avoiding delay, so far as compatible with the proper consideration of the issues.

Application of the overriding objective

4.—(1) The president and any committee must seek to give effect to the overriding objective when—

- (a) exercising any power under these Regulations; and
- (b) interpreting any regulation.

(2) In particular, the president and any committee must manage the proceedings in accordance with the overriding objective.

(3) The parties must assist the panel or any committee to further the overriding objective.

(a) The homeowner housing panel is constituted under Schedule 4 to the Rent (Scotland) Act 1984, and given additional functions and re-named for the purposes of the Property Factors (Scotland) Act 2011 by section 16(2) of that Act.
(b) 1984 c.58.

PART 2

Applications to the panel

Application

5.—(1) An application to the panel must be made in writing.

(2) In addition to the homeowner's reasons as required by section 17(2) of the Act, the application must state—

- (a) the name and address of the homeowner;
- (b) that the application is made under section 17(1) of the Act;
- (c) the name, address and profession of the representative of the homeowner, if any;
- (d) the name of the property factor and, if known, the registered number of the property factor;
- (e) the address of the property factor or, if known, the name and address and profession of the property factor's representative; and
- (f) the homeowner's reasons for considering that the property factor has failed to resolve the homeowner's concern.

(3) The application must be signed and dated by the homeowner or by the homeowner's representative.

Required attachments to application

6. The homeowner must attach to the application a copy of—

- (a) the notification from the homeowner to the property factor for the purposes of section 17(3)(a) of the Act;
- (b) any response in writing provided by or on behalf of the property factor to that notification;
- (c) any other correspondence between the homeowner and the property factor relating to the homeowner's concern; and
- (d) any statement of services provided by the property factor to the homeowner as required by the property factor code of conduct.

Representation

7.—(1) A party may act in person or be represented by any person.

(2) Where a representative begins to act for a party, the representative must notify the committee and the other party of that fact as soon as practicable.

(3) A representative acting for a party may on behalf of that party do anything that these Regulations require or permit that party to do.

(4) Where a representative ceases to act for a party, the representative must notify the committee and any other party of that fact and, if known, of the name and address of any new representative as soon as practicable.

(5) Notification under paragraphs (2) and (4) may be given orally at a hearing to the committee and to any other party present, but must otherwise be given in writing.

(6) If the committee are satisfied that there is a good reason, they may refuse to permit a particular person to assist or represent a party at a hearing.

PART 3

Process of the application

Action by the panel

Notification of referral to committee

8.—(1) The committee to which an application is referred under section 18(1)(a) of the Act must, as soon as practicable after receiving the reference, give notice to the parties (or any representative)—

- (a) setting out the detail of the application in such manner as the committee think fit;
 - (b) stating that the president has referred the application to the committee for determination; and
 - (c) specifying the day by which any written representations must be made.
- (2) The day specified for the purposes of paragraph (1)(c)—
- (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 committee think fit.
- (3) The committee must notify each party of any change mentioned in paragraph (2)(b).

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.

St Andrew's House,
Edinburgh
29th May 2012

KEITH BROWN
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the making and determination of applications by homeowners to the homeowner housing panel under section 17(1) of the Property Factors (Scotland) Act 2011 (“the Act”).

Part 1 deals with preliminary matters on citation, commencement, interpretation and also sets out the overriding objective of the Regulations.

Part 2, comprising regulations 5 to 7, sets out procedure for the making of an application by a homeowner to the homeowner housing panel. Regulation 5 details what must be stated in an application. Regulation 6 details the documents which must be attached to an application. Regulation 7 relates to representation of any party in the proceedings.

Part 3, comprising regulations 8 to 28, makes provision relating to the process of an application to the homeowner housing panel.

Regulation 8 deals with notification of any referral of the application to a homeowner housing committee in terms of section 18(1)(a) of the Act to the parties.

Regulations 9 to 27 make provision for subsequent procedure relating to the consideration of an application by a homeowner housing committee in relation to:

- hearing related applications together (either relating to the same property factor or the same homeowner) (regulation 9);
- inquiries that may be made by a committee (regulation 10);
- evidence that may be considered by a committee (regulation 11);
- lodging of documents and a list of witnesses (regulation 12);
- directions that may be given by a committee (regulation 13);
- correction of any document issued by the committee (regulation 14);
- withdrawal of an application (regulation 15);
- inspection of land relating to the application by or on behalf of the committee (regulation 16);
- hearings (regulation 17);
- deciding a case without an oral hearing (regulation 18);
- exclusion of persons disrupting a hearing (regulation 19);
- prohibition on recording of proceedings by parties (regulation 20);
- adjournment of a hearing requested by a party (regulation 21);
- amendment of an application or written representations (regulation 22);
- hearing the case in the absence of a party (regulation 23);
- hearing the case in the absence of a member of a committee (regulation 24);
- the death or legal incapacity of a homeowner or property factor (regulation 25);
- decisions of committees (regulation 26); and
- signature of documents by electronic signature (regulation 27).

Transitional provision is set out in regulation 28 for when circumstances prior to the coming into force of the relevant provisions of the Act and these Regulations on 1st October 2012 can be considered by the president of the panel and any committee.

No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen.

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