

2015 No. 369

HOUSING

The Private Rented Housing Panel (Tenant and Third Party Applications) (Scotland) Regulations 2015

Made - - - - - *29th October 2015*

Laid before the Scottish Parliament *2nd November 2015*

Coming into force - - - *1st December 2015*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 8 of schedule 2 to the Housing (Scotland) Act 2006(a) and all other powers enabling them to do so.

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Private Rented Housing Panel (Tenant and Third Party 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 22(1) or (1A) of the Act(b);

“committee” means a private rented housing committee;

“the landlord’s duty” means the duty imposed by section 14(1) of the Act;

“panel” means the private rented housing panel;

“president” means the president of the panel;

“proceedings” means the proceedings in relation to the making of a decision under section 23(1), 24(1), 25(1) or 26(1) of, or paragraph 7(2) or (3) of schedule 2 to, the Act (including any preliminary issue);

“representative” means a representative under regulation 6; and

“working day” has the same meaning as in section 187 of the Act.

(a) 2006 asp 1. Paragraph 8 was amended by section 26(7) of the Housing (Scotland) Act 2014 (asp 14).

(b) Subsection (1A) of section 22 is inserted by section 25(1) of the Housing (Scotland) Act 2014.

(2) In these Regulations where any formal communication requires to be served upon the parties it shall be deemed to have been served on a 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^(a) may send a formal communication on behalf of the panel or the committee.

(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 in accordance with these Regulations, 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)^(b);

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

The overriding objective

3.—(1) The overriding objective of these Regulations is to enable the president, panel and the 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 committee 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 the committee must seek to give effect to the overriding objective when exercising any power under these Regulations and interpreting any regulation.

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

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

PART 2

Applications to the panel

Application

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

(a) 1984 c.58.

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

- (2) Where a tenant makes an application—
- (a) in addition to the tenant’s reasons as required by section 22(2) of the Act^(a) (reasons for considering that the landlord has failed to comply with the landlord’s duty), the application must state—
 - (i) the name and address of the tenant;
 - (ii) that the application is made under section 22(1) of the Act;
 - (iii) the name, address, and profession of any representative of the tenant;
 - (iv) the name of the landlord;
 - (v) the address of the landlord, or the name, address and profession, if known, of any representative of the landlord;
 - (vi) the landlord’s registration number, if known;
 - (vii) the nature of the work requiring to be done; and
 - (viii) that the landlord has been notified of the work; and
 - (b) the application must be signed by the tenant or by a representative of the tenant.
- (3) Where a third party applicant makes an application—
- (a) in addition to the third party applicant’s reasons as required by section 22(2) of the Act, the application must state—
 - (i) the name and address of the third party applicant;
 - (ii) that the application is made under section 22(1A) of the Act;
 - (iii) the name and address of the tenant;
 - (iv) the name, address and profession, if known, of any representative of the tenant;
 - (v) whether or not the tenant wants to be a party to the proceedings;
 - (vi) the name of the landlord;
 - (vii) the address of the landlord, or the name, address and profession, if known, of any representative of the landlord;
 - (viii) the landlord’s registration number, if known;
 - (ix) the nature of the work requiring to be done; and
 - (x) that the landlord has been notified of the work; and
 - (b) the application must be signed by the third party applicant or by a representative of the third party applicant.
- (4) Where a property fails to meet the repairing standard in more than one respect, the applicant may raise multiple issues relating to the repairing standard in one application.
- (5) The application must be accompanied by—
- (a) a copy of the lease or tenancy agreement, or if these are not available as much information about the tenancy as the applicant can give;
 - (b) a copy of the notification referred to in paragraph (2)(a)(viii) or (3)(a)(x) and any subsequent correspondence relating to that notification.

Representation

6.—(1) A party may act in person or be represented by a person appointed by them in connection with anything that these Regulations require or permit them to do.

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

^(a) Section 22(2) was amended by section 25(1) of the Housing (Scotland) Act 2014.

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

(4) Notification under paragraphs (2) and (3) may be given orally at a hearing to the committee and to any other party present, but must otherwise be given in writing.

(5) If the committee is satisfied that there is a good reason to do so, it may refuse to permit a particular person to assist or represent a party at a hearing.

Mediation

7. The president must, in cases identified by the president as suitable for mediation—

- (a) bring to the attention of the parties the availability of mediation 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, facilitate that mediation.

PART 3

Process of the application

Need for additional work

8. Where further relevant issues come to light in the course of investigation by the committee, the tenant or third party applicant may make a further application in respect of those issues, but may not do so until that person has notified the landlord that further work requires to be done for the purposes of complying with the landlord's duty.

Further application to follow same procedure

9.—(1) Any application under regulation 8 must provide the information set out in regulation 5(2) or as the case may be regulation 5(3), and must follow the same procedure as the original application, except that any time scales applicable may be shortened with the consent of the parties.

(2) If the committee dealing with the original application is satisfied that it is expedient that the further application be made by way of amendment to the original application, it may allow such an amendment.

(3) The committee must give suitable directions to the parties to ensure that the amended application is properly and fairly considered.

Hearing two or more applications together

10.—(1) Where two or more applications relating to the same property or to the same required work are under consideration by the committee at the same time, the committee may direct them to be heard together.

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

Directions

11.—(1) On its own initiative, or on the application of any party, the committee may give directions to the parties relating to the conduct or progress of the application.

(2) The power to give directions is to be exercised subject to any specific provision of these Regulations.

- (3) Directions must be intimated to every party and may be given orally or in writing.
- (4) Directions of the committee 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 such time limit given in previous directions;
 - (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 any other information which appears to be necessary for the determination of the application;
 - (iii) any witnesses to be heard;
 - (iv) the manner in which any evidence is to be given;
 - (e) require any party to lodge and serve—
 - (i) statements of any evidence which will be put forward at the hearing;
 - (ii) a paginated and indexed bundle of all the documents which will be relied on at the hearing;
 - (iii) a skeleton argument which summarises the submissions which will be made at the hearing and cites all the authorities which will be relied on, identifying any particular passages to be relied on;
 - (iv) a list of witnesses whom any party wishes to call to give evidence.
- (5) When making directions the committee must take into account the ability of parties to comply with the directions.

Evidence

- 12.**—(1) The committee must allow parties no less than 5 working days when requiring them to produce documents or information.
- (2) The committee must not consider any written evidence which is lodged or served outwith a time limit it has set unless satisfied that there are good reasons to do so.
- (3) Where a party seeks to rely on a copy of a document as evidence, the committee may require the original document to be produced.
- (4) The committee may allow evidence to be heard on any matter the committee considers to be relevant whether or not this matter has been specified in the written representations.

Withdrawal of applications

- 13.**—(1) An application may be withdrawn by the applicant orally at a hearing or in writing at any time by serving a notice of withdrawal on the landlord and the committee.
- (2) A notice of withdrawal must be in writing and may be made on a form obtained from the offices of the panel.

Inspections

- 14.**—(1) An inspection of the property may be made before or during the hearing or after an adjournment of the hearing, or at such stage in relation to consideration of the written representations as the committee shall determine.
- (2) The committee may make or commission such further inspections as it considers appropriate to enable it to determine whether or not the work required by a repairing standard enforcement order has been completed adequately, or to decide whether to grant a certificate under section 60 of the Act in relation to the work required by any such order.

(3) Any such inspection may be carried out by the committee, a member of the committee, or any person authorised to do so by the committee or the president.

(4) The committee must give such written notice of an inspection as it deems sufficient to the party or parties and must allow each party and any representative to attend the inspection.

Hearings

15.—(1) A committee must give each party reasonable notice of the time and place of the hearing (including any adjourned or postponed hearing) and any changes to the time and place of the hearing.

(2) The notice period for a hearing must be no less than 10 working 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 in public unless the committee decides that exclusion of the public is appropriate.

(4) At a hearing—

- (a) a party or a party's representative may conduct the party's case;
- (b) the parties shall be heard in such order and, subject to the provisions of these Regulations, the procedure shall be such as the committee shall determine;
- (c) a party may call witnesses, give evidence on his or her own behalf and cross-examine any witnesses called by any other party.

(5) The committee may at any time postpone or adjourn a hearing, subject to regulation 18.

Power to determine the proceedings without an oral hearing

16.—(1) Subject to paragraph (2), the committee may make a decision under section 24(1), 25(1) or 26(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 it 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

17.—(1) Without prejudice to any other powers it may have, the committee may exclude from any hearing, or part of it, any person whose conduct has disrupted the hearing or whose conduct has otherwise interfered with the administration of justice.

(2) In deciding whether to exercise the power conferred by paragraph (1) the committee must, in particular, 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 it must allow any representative of that party sufficient opportunity to consult the party.

Adjournment

18.—(1) Where a party applies for an adjournment of a hearing, that 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 on in support of the application for adjournment.

(2) The committee may only adjourn a hearing at the request of a party if satisfied that the application cannot otherwise be justly determined.

(3) If the reason for such an adjournment is to allow the party more time to produce evidence, the committee may only adjourn 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.

Amendment

19.—(1) Subject to regulation 20, a party may amend that party's written representations—

- (a) any time up to 5 working days prior to the date fixed for a hearing; or
- (b) within 5 working days prior to the date fixed for the hearing or during the hearing, with the consent of the committee and on such conditions, if any, as the committee thinks fit.

(2) Such amendment must 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 the other party or parties and noted by the committee.

(3) On receipt of a written amendment, the committee must intimate the amendment to the other party or parties in writing.

Amendment raising new issues of disrepair

20.—(1) Where the effect of any proposed amendment of the application by the applicant would be to introduce a new issue of disrepair, such amendment may only be made with the consent of the committee and on such conditions, if any, as the committee thinks fit.

(2) Such an amendment may only be made if the applicant has notified the landlord that further work requires to be done for the purposes of complying with the landlord's duty.

(3) Where an application is amended to include a new issue of disrepair, the landlord may make written representations in response to the amendment, or request the opportunity to make oral representations, by a specified date not less than 14 days from the date on which intimation of the amendment is served.

(4) The applicant may also make further written representations or request the opportunity to make oral representations, by the specified date.

(5) The date by which such representations must be made may, at the request of a party, be changed to such later day as the committee thinks fit.

(6) The committee must notify all parties of any change under paragraph (5).

(7) Where an application is amended to include a new issue of disrepair and the landlord requests further time to complete the work necessary to effect the repair, then, the committee must allow such further time as it considers reasonable for that work to be completed.

(8) The period of time allowed under paragraph (7) must not be less than 14 days unless the committee considers that the repair is urgent.

Hearing case in the absence of a party

21. If a party does not appear at a hearing, the committee, on being satisfied that the requirements of regulation 15 regarding the giving of notice of a hearing have been duly complied with, may proceed to deal with the application upon the representations of any party present and all the material before it.

Prohibition on recording of proceedings by parties

22. The committee 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.

Voting for and giving of decision

23.—(1) The decision of the committee on an application must be made by majority but in the event of a tie, the chair has a casting vote.

(2) The decision must be recorded in a document signed by the chair.

(3) A statement of reasons must be prepared by the chair with the assistance of the other members of the committee.

(4) Where the decision of the committee is not unanimous, the chair must give a brief note of the opinion of the minority.

(5) In the absence or incapacity of the chair, the chair's functions under this regulation may be carried out by another member of the committee.

(6) The decision of the committee, statement of reasons and note (if any) must be published.

Correction of orders and statements of reasons

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

(2) Where an order, direction, notice of decision or statement of reasons is amended under paragraph (1), the committee must serve an amended version on the party or parties upon whom it served the original.

Expenses

25. Any person wishing to seek payment of allowances and expenses in terms of paragraph 5 of schedule 2 to the Act must do so in writing and may do so on a form obtained from the offices of the panel.

Death, insolvency or incapacity of a party

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

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

(a) the person's estate is sequestrated;

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

(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.

(3) The committee may continue to consider and determine the application despite the death, insolvency or legal incapacity of either the landlord or the tenant.

PART 4

Revocation

Revocation of the Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007

27.—(1) Subject to paragraph (2) the Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007^(a) are revoked.

(2) The Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007 continue in force in relation to any application received by the panel prior to 1st December 2015.

M J BURGESS

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
29th October 2015

^(a) S.S.I. 2007/173.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make further provision about the making and determination of applications by tenants to the private rented housing panel under section 22(1) of the Housing (Scotland) Act 2006 and of applications by third party applicants under section 22(1A) of that Act.

Part 1 deals with preliminary matters on citation, commencement and interpretation.

Regulation 3 sets out the overriding objective of the Regulations.

Part 2, comprising regulations 5 to 7, sets out procedure for applications by a tenant or a third party applicant and allows for mediation of the dispute in cases considered suitable by the president of the panel.

Part 3, comprising regulations 8 to 26, provides for subsequent procedure.

Regulations 8 to 10 deal with the conduct of applications and additional or conjoined applications. Regulations 11 to 24 provide for the procedure of a committee of the panel.

Regulation 25 sets out a procedure for seeking payment of expenses .

Regulation 26 provides for a situation where a party to the action dies, or becomes insolvent or subject to a legal incapacity.

Part 4, comprising regulation 27, revokes the Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007 except in relation to applications received by the panel prior to 1st December 2015.

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