

## SCHEDULE 1

### The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2016

## PART 1

### General provisions

#### Interpretation

**1.—**(1) In these Rules—

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

“chairing member” means the chairing member of the First-tier Tribunal, who—

- (a) where the First-tier Tribunal is composed of a legal member alone or a legal member with one or two ordinary members, is the legal member; and
- (b) where the First-tier Tribunal is composed of an ordinary member alone, is the ordinary member;

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

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

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

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

“party” includes, unless the context requires otherwise, the homeowner, the property factor, the tenant, the landlord, the third party applicant or any other person sisted to be a party to the proceedings;

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

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

(2) Where terms are used in these Rules which are defined terms in the Housing (Scotland) Act 2006 or the Property Factors (Scotland) Act 2011<sup>(3)</sup>, the definitions in those Acts in respect of those terms apply to these Rules.

#### Requirements for making an application

**2.** In relation to an application—

- (a) it is held to have been made on the date that it is lodged if, on that date, it is lodged in the prescribed manner as set out in rules 13 and 14, or 42 or 54, as appropriate;
- (b) the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether the application has been lodged in the prescribed manner by assessing whether all mandatory requirements for lodgement have been met; and
- (c) if it is determined that the application is not lodged in the prescribed manner, the First-tier Tribunal may request further documents, and the application shall be held to be made

---

<sup>(1)</sup> 2000 c.7.

<sup>(2)</sup> Section 7 was amended by S.I. 2016/696.

<sup>(3)</sup> 2011 asp 8.

on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the prescribed manner for lodgement.

### **The overriding objective**

- 3.—(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.

### **Application of the overriding objective**

- 4.—(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
  - (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.

### **Review**

- 5.—(1) An application of a party for a review under section 43(2)(b) of the 2014 Act must be made in writing to the First-tier Tribunal within 14 days after the day of the decision and must state on what grounds the decision should be reviewed (whether on the grounds of error of fact or law or both).
- (2) If at any stage in the proceedings the First-tier Tribunal is satisfied that an application under paragraph (1) is totally without merit, it may refuse the application by giving notice to the applicant in writing that it has refused the application as totally without merit.
- (3) The First-tier Tribunal must send a copy of any application referred to in paragraph (1) to any other party involved in the proceedings within 10 working days after the day of receipt of the application.
- (4) A notice of the decision arising from a review referred to in paragraph (1) or from a review at the instance of the First-tier Tribunal itself under section 43(2)(a) of the 2014 Act and reasons for the decision must as soon as reasonably practicable be sent by the First-tier Tribunal to each party.
- (5) Where on review of any decision the First-tier Tribunal is considering setting it aside, or setting it aside and re-deciding it (but not in deciding to confirm any decision or correct some minor or accidental error contained in it) it must not set it aside, or set it aside and re-decide it, without first giving each party an opportunity to make representations to it before any decision is made to set it aside, or set it aside and re-decide it.

(6) The members of the First-tier Tribunal making any decision in relation to a review referred to in paragraph (1) or at the instance of First-tier Tribunal itself under section 43(2)(a) of the 2014 Act must as far as reasonably practicable be the same members who made the decision to which the review relates.

(7) The First-tier Tribunal may on cause shown, if in the interests of justice, extend the period of 14 days referred to in paragraph (1).

(8) The 30 days referred to in regulation 2(1) of the Scottish Tribunals (Time Limits) Regulations 2016(4) in respect of an application to the First-tier Tribunal is extended by any review period.

(9) In this rule “review period” means the time period between an application by a party under paragraph (1) for a review or, as the case may be, the First-tier Tribunal’s decision to review a decision at its own instance under section 43(2)(a) of the 2014 Act and the receipt by a party of a notification under paragraph (4).

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

**6.** An application for permission under section 46(3)(a) of the 2014 Act must be made in writing and must—

- (a) identify the decision of the First-tier Tribunal to which it relates;
- (b) identify the alleged error or errors of law in the decision; and
- (c) state the ground or grounds of appeal.

### **First-tier Tribunal’s decisions on applications for permission to appeal**

**7.—(1)** The First-tier Tribunal must decide whether to give permission to appeal on each ground of appeal.

(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 on a ground of appeal it must provide with the record of 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.

### **Representatives**

**8.—(1)** A party may be represented in any proceedings by a legal representative or lay representative whose details must be communicated to the First-tier Tribunal prior to any hearing.

(2) A party may show any document or communicate any information about the proceedings to that party’s legal representative or lay 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 legal representative or lay representative is subject to any prohibition or restriction on disclosure in the same way that the party is.

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

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

---

(4) [S.S.I. 2016/231](#).

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (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.

### **Supporters**

- 9.**—(1) A party who is an individual may be accompanied by another person 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 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.

### **Expenses**

- 10.**—(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 or parties to unnecessary or unreasonable expense.
- (2) Where expenses are awarded under paragraph (1), the amount of the expenses awarded and recoverable under that paragraph shall be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party or parties in whose favour the order for expenses is made.

### **Prohibition on recording of proceedings by parties**

- 11.** 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.