
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 163

**The Tenements (Scotland) Act 2004
(Heating Services) Regulations 2018**

Citation and commencement

1. These Regulations may be cited as the Tenements (Scotland) Act 2004 (Heating Services) Regulations 2018 and come into force on 13th July 2018.

Interpretation

2. In these Regulations—

“the 2004 Act” means the Tenements (Scotland) Act 2004;

“communal heating” means the distribution of thermal energy in the form of steam, hot water, or chilled liquids from a central source in a building which is occupied by more than one final customer, for the use of space or process heating, cooling or hot water;

“district heat network” means the distribution of thermal energy in the form of steam, hot water or chilled liquids from a central source of production through a network to multiple buildings or sites for the use of space or process heating, cooling or hot water;

“installation” means work an owner is entitled to instruct or carry out under section 19 (installation of service pipes etc.) of the 2004 Act in accordance with these Regulations;

“notice of the proposals” means notice given under regulation 4 or revised notice;

“owner” is to be construed in accordance with section 28 (meaning of “owner”, determination of liability etc.) of the 2004 Act, and the owner giving notice under these Regulations includes the owner of more than one flat where the owners of each of those flats consent to act together;

“relevant contributor” means any owner of a flat in the tenement who is not an owner of the other part of the tenement but is required, by virtue of the management scheme which applies as respects the tenement, to contribute to the cost of maintenance of the other part of the tenement;

“revised notice” means a notice under regulation 5(2)(b);

“the other part of the tenement” means the part of the tenement not wholly owned by the owner giving notice under regulation 4—

(a) through which pipes, cables or other equipment would be led; and

(b) to which such equipment would be fixed,

under these Regulations; and

“title condition” has the meaning given by section 122(1) (interpretation) of the Title Conditions (Scotland) Act 2003⁽¹⁾.

(1) [2003 asp 9](#). Section 122(1) was relevantly amended by paragraph 43(11) of schedule 5 of the Land Registration etc. (Scotland) Act 2012 ([asp 5](#)).

Services permitting installation of pipes etc. in tenements

3.—(1) Subject to paragraph (2), the following services are prescribed for the purposes of section 19(1) (installation of service pipes etc.) of the 2004 Act—

- (a) heating services supplied by a district heat network; and
- (b) communal heating.

(2) Paragraph (1) does not apply to the extent that a title condition makes provision about—

- (a) alterations or improvements; or
- (b) an owner's entitlement to lead pipes, cables or other equipment through any part of the tenement which is not wholly within another owner's flat and to fix and keep such equipment there,

which could enable (or which restricts or prevents) the services mentioned in paragraph (1)(a) or (b).

(3) The title condition need not refer to heating or other specific wording used in paragraph (1).

Installation notice requirements

4.—(1) Where proposing an installation, the owner must give notice to each owner of the other part of the tenement of—

- (a) the nature and extent of the work to be carried out;
- (b) the safety standards which the work is required to meet;
- (c) a timetable for carrying out the work, including the dates by which it is proposed the work will be commenced and completed;
- (d) what disruption (if any) is expected to be caused;
- (e) arrangements that will be put in place to ensure the work is completed;
- (f) the arrangements for maintaining and repairing the equipment, once it is installed;
- (g) what insurance is in place during the work to install the service; and
- (h) the address to which any objections or other representations relating to the notice are to be sent.

(2) The notice must be in the form specified in schedule 1.

Installation objections or representations

5.—(1) Where an owner gives notice under regulation 4, any owner of the other part of the tenement may object or make other representations in relation to that notice, by giving notice of the objections or representations to the owner who gives notice under regulation 4 not later than 28 clear days after notice of the proposals is given.

(2) If the owner giving notice under regulation 4 still wishes to proceed, that owner—

- (a) must try to reach agreement with an owner who objects or makes representations under paragraph (1); and
- (b) may revise the proposal set out in the notice by giving to each owner of the other part of the tenement a revised notice.

(3) Where a revised notice is given under paragraph (2)(b), the owner giving notice must—

- (a) allow objections or other representations in relation to the revised notice in accordance with paragraph (1); and
- (b) try to reach agreement in relation to the revised notice in accordance with paragraph (2)(a).

(4) The revised notice must be in the form specified in schedule 2.

Carrying out installation and application to sheriff to resolve disputes

- 6.—(1) An installation may only begin—
- (a) if no objections or representations are made under regulation 5(1) or (3)(a), after 28 clear days have elapsed from the giving of the notice of the proposals;
 - (b) if an objection or representation is made, when agreement is reached under regulation 5(2)(a) or (3)(b); or
 - (c) if an objection or representation is made and agreement is not reached, in accordance with an order under section 6(2) (application to sheriff for order resolving certain disputes) of the 2004 Act on an application under section 6(1)(b) of that Act.
- (2) The owner giving notice of the proposals may apply to the sheriff under section 6(1)(b) of the 2004 Act for an order allowing an installation to be carried out only after—
- (a) 28 clear days have elapsed from the giving of the notice of the proposals; and
 - (b) the owner has complied with—
 - (i) regulation 5(2)(a); and
 - (ii) where a revised notice is given under regulation 5(2)(b), regulation 5(3).
- (3) In considering whether to grant the order, the sheriff is to allow the installation if it appears reasonable that the installation is carried out, having regard to—
- (a) any conditions the sheriff thinks it fit to impose; and
 - (b) any other order the sheriff considers necessary or expedient.

Costs of installation

7. Nothing in these Regulations creates liability on an owner given notice of the proposals to contribute to the cost of carrying out an installation.

Damage for installation

8.—(1) The owner instructing or carrying out an installation must, so far as reasonably practicable, ensure that the other part of the tenement is left substantially in no worse a condition than that which it was in immediately before the installation (subject to the installation itself).

(2) If the owner fails to comply with the duty in paragraph (1), an owner of the other part of the tenement or a relevant contributor may—

- (a) carry out, or arrange for the carrying out of, such work as is reasonably necessary to restore the other part of the tenement so that it is substantially in no worse a condition than that which it was in immediately before the installation (subject to the installation itself); and
- (b) recover from the owner any expenses reasonably incurred in doing so.

Access for installation (common parts of the tenement)

9.—(1) For the avoidance of doubt in respect of the common parts of the tenement, if section 17 (access for maintenance and other purposes) of the 2004 Act does not apply, the owner or occupier of any part of the tenement that access is required to, or through, for the purpose of an installation must allow access for that purpose.

(2) That access is to be provided in accordance with section 17 of the 2004 Act.

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

St Andrew's House
Edinburgh
17th May 2018

ANNABELLE EWING
Authorised to sign by the Scottish Ministers