

2018 No. 658

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

TENEMENTS

The Tenements (Scotland) Act 2004 (Gas Services) Order 2018

<i>Made</i> - - - -	<i>30th May 2018</i>
<i>Laid before Parliament</i>	<i>1st June 2018</i>
<i>Coming into force</i> - -	<i>13th July 2018</i>

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(2) and (3) of the Scotland Act 1998(a).

Citation, commencement and extent

1.—(1) This Order may be cited as the Tenements (Scotland) Act 2004 (Gas Services) Order 2018 and comes into force on 13th July 2018.

(2) This Order extends to Scotland only.

Interpretation and application

2.—(1) In this Order—

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

“flat” has the meaning it is given in the 2004 Act(c);

“gas” means—

(a) any substance in a gaseous state which consists wholly or mainly of—

(i) methane, ethane, propane, butane, hydrogen or carbon monoxide;

(ii) a mixture of two or more of those gases; or

(iii) a combustible mixture of one or more of those gases and air; and

(b) any other substance in a gaseous state which is gaseous at a temperature of 15°C and a pressure of 1013.25 millibars and is specified in an order made under section 48(1) of the Gas Act 1986(d);

(a) 1998 c.46.

(b) 2004 asp 11 (“the 2004 Act”).

(c) “Flat” is defined in section 29(1) of the 2004 Act.

(d) 1986 c.44. There are amendments to section 48 which are not relevant to this Order.

“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 this Order;

“notice of the proposals” means notice given under article 5 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 this Order includes the owners 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 a 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 article 6(2)(b);

“tenement” is to be construed in accordance with section 26 (meaning of “tenement”) of the 2004 Act;

“the other part of the tenement” means any part of a tenement not wholly owned by the owner giving notice under article 5 —

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

(b) to which such equipment would be fixed,

under this Order; and

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

(2) Section 30 (giving of notice to owners) of the 2004 Act applies to any notice given under this Order as it applies to a notice given under, or in connection with, the 2004 Act.

Application of section 19 of the 2004 Act to gas services

3.—(1) A supply of gas is to be treated as a service prescribed for the purposes of section 19(1) (installation of service pipes etc.) of the 2004 Act.

(2) In respect of the right conferred by section 19(1) of the 2004 Act as applied by paragraph (1)—

(a) section 19(2) of the 2004 Act does not apply; and

(b) instead that right is exercisable in accordance with articles 5 to 10.

Disapplication where title conditions apply

4.—(1) Article 3(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 supply to the owner’s flat of gas.

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

Installation notice requirements

5.—(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;

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

- (b) the safety standards which the work is required to meet;
 - (c) the 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) the 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) That notice must be in the form specified in Schedule 1.

Installation objections or representations

6.—(1) Where an owner gives notice under article 5, 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 article 5 not later than 28 clear days after notice of the proposals is given.

- (2) If the owner giving notice under article 5 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) That revised notice must be in the form specified in Schedule 2.

Carrying out installation and application to sheriff to resolve disputes

- 7.**—(1) An installation may only begin—
- (a) if no objections or representations are made under article 6(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 article 6(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) article 6(2)(a); and
 - (ii) where a revised notice is given under article 6(2)(b), article 6(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

8. Nothing in this Order creates liability on an owner given notice of the proposals to contribute to the cost of carrying out an installation.

Damage for installation

9.—(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)

10.—(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.

Dover House
London
30th May 2018

David Mundell
Secretary of State
Scotland Office

SCHEDULE 1

Article 5(2)

Form of installation notice **INSTALLATION NOTICE**

This notice is given by an owner or group of owners proposing to install equipment through or to common parts of a tenement for the purpose of providing a gas service.

Gas service for which the installation is required:

(see note for completion 1)

To the owner(s) of the other part of the tenement:

(see note for completion 2)

Name and address of the owner(s) giving notice:

(see note for completion 3)

Flat(s) to which the notice relates (if different from the above):

(see note for completion 4)

The nature and extent of the work to be carried out:

(see note for completion 5)

The safety standards which the work is required to meet:

(see note for completion 6)

The timetable for carrying out the work, including the proposed dates of commencement and completion:

(see note for completion 7)

What disruption is expected to be caused (if any) to other occupiers within the tenement:

(see note for completion 8)

Arrangements that will be put in place to ensure the work is completed:

(see note for completion 9)

The arrangements for maintaining and repairing the equipment, once it is installed:

(see note for completion 10)

What insurance is in place during the work to install the service:

(see note for completion 11)

Any objections or other representations relating to this notice must be sent to:

(see note for completion 12)

Date:

(see note for completion 13)

Notes for completion
(These notes are not part of the notice)

1. Please provide details of the gas service for which the proposed installation is required.
2. This notice must be sent to each owner of the other part of the tenement through or to which equipment would be led or fixed (except those who are proposing the installation). You must insert the full name and address of the owner, if known.
3. You must insert your full name and address (for each owner giving notice where the owners of more than one flat are giving notice).
4. This is only applicable if you do not currently reside at the above address, e.g. you may be the landlord instructing the proposed installation. Otherwise put “not applicable”. If more than one owner is proposing the installation and any such owner does not currently reside at the above address, please state the name of that owner in connection with the flat to which the notice relates.
5. Provide information on where the equipment will be led through or fixed to the tenement. You should obtain this information from the installing utility company.
6. Provide the safety standards that the installing utility company will adhere to when installing the service. You should obtain this information from the installing utility company.
7. The utility company will have provided you with a proposed timetable for the work. This will show the time period within which the work is due to be completed. You should provide this information here.
8. Some occupiers within the tenement may not be owners of the other part of the tenement through or to which equipment would be led or fixed. However, there may be general disruption to the whole tenement resulting from the installation work, e.g. drilling, banging, dust etc. You should provide any details of work which will affect any occupiers in the tenement.
9. Provide information on the arrangements that are in place to ensure the work is completed if, for example, the contractor carrying out the work should cease trading.
10. Provide information on the arrangements that are in place to repair and maintain the pipes/cables or other equipment once installed. This information should also include arrangements for rectifying any damage to the equipment after it has been installed and any damage to the fabric of the building caused by the equipment.
11. Provide information on the extent of any relevant insurance arrangements in place during the installation of the service.
12. Specify the address to which any objections or other representations are to be sent. The deadline for such objections or representations is not later than 28 clear days after this notice is given. In accordance with section 30(4) of the 2004 Act, this notice is taken to be given on the day of posting or, if transmitted by electronic means, the day of transmission.
13. Provide the date on which you are posting or delivering the notice; or if you are transmitting the notice by electronic means, the date of transmission.

Form of revised installation notice

REVISED INSTALLATION NOTICE

This notice is given by an owner or group of owners proposing to install equipment through or to common parts of a tenement for the purpose of providing a gas service. This notice contains revised details proposed after an objection or representation was received from an owner of the other part of the tenement.

YOU MUST ATTACH ANY PREVIOUS NOTICE OF THE PROPOSALS TO THIS REVISED NOTICE

Gas service for which the installation is required:

(see note for completion 1)

To the owner(s) of the other part of the tenement:

(see note for completion 2)

Name and address of the owner(s) giving notice:

(see note for completion 3)

Flat(s) to which the notice relates (if different from the above):

(see note for completion 4)

Any revisions to the nature and extent of the work to be carried out:

(see note for completion 5)

Any revisions to the safety standards which the work is required to meet:

(see note for completion 6)

Any revisions to the timetable for carrying out the work, including the proposed dates of commencement and completion:

(see note for completion 7)

What disruption is expected to be caused (if any) to other occupiers within the tenement:

(see note for completion 8)

Any revisions to the arrangements that will be put in place to ensure the work is completed:

(see note for completion 9)

Any revisions to the arrangements for maintaining and repairing the equipment, once it is installed:

(see note for completion 10)

Any revisions to the insurance that is in place during the work to install the service:

(see note for completion 11)

Any objections or other representations relating to this revised notice must be sent to:

(see note for completion 12)

Date:

(see note for completion 13)

Notes for completion

(These notes are not part of the notice)

1. Please provide details of the gas service for which the proposed installation is required.
2. This notice must be sent to each owner of the other part of the tenement through or to which equipment would be led or fixed (except those who are proposing the installation). You must insert the full name and address of the owner, if known.
3. You must insert your full name and address (for each owner giving notice where the owners of more than one flat are giving notice).
4. This is only applicable if you do not currently reside at the above address, e.g. you may be the landlord instructing the proposed installation. Otherwise put "not applicable". If more than one owner is proposing the installation and any such owner does not currently reside at the above address, please state the name of that owner in connection with the flat to which the notice relates.
5. Describe any revisions to the information on where the equipment will be led through or fixed to the tenement. You should obtain this information from the installing utility company.
6. Describe any revisions to the safety standards that the installing utility company will adhere to when installing the service. You should obtain this information from the installing utility company.
7. Describe any revisions to the proposed timetable for the work, including the time period within which the work is due to be completed. You should obtain this information from the installing utility company.
8. Some occupiers within the tenement may not be owners of the other part of the tenement through or to which equipment would be led or fixed. However, there may be general disruption to the whole tenement resulting from the revised installation work, e.g. drilling, banging, dust etc. You should provide any details of work which will affect any occupiers in the tenement.
9. Describe any revisions to the arrangements that are in place to ensure the work is completed if, for example, the contractor carrying out the work should cease trading.
10. Describe any revisions to the arrangements that are in place to repair and maintain the pipes/cables or other equipment once installed. This information should also include arrangements for rectifying any damage to the equipment after it has been installed and any damage to the fabric of the building caused by the equipment.
11. Describe any revisions to any relevant insurance arrangements in place during the installation of the service.
12. Specify the address to which any objections or other representations are to be sent. The deadline for such objections or representations is not later than 28 clear days after this revised notice is given. In accordance with section 30(4) of the 2004 Act, this revised notice is taken to be given on the day of posting or, if transmitted by electronic means, the day of transmission.
13. Provide the date on which you are posting or delivering the revised notice; or if you are transmitting the revised notice by electronic means, the date of transmission.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provisions that are consequential on the Tenements (Scotland) Act 2004 (“the 2004 Act”). The purpose of the Order is to provide for the installation in tenements in Scotland of gas supply pipes and equipment.

Article 3 provides that a supply of gas (which is defined in article 2) is to be treated as a prescribed service for which an owner of a flat is entitled to lead through, and fix to, common parts of a tenement pipes, cables or other equipment in accordance with section 19 of the 2004 Act. Article 4 provides that the Order only applies where the title conditions do not make provision about whether equivalent works are allowed, e.g. for alterations or improvements, or where the development management scheme applies under section 71 of the Title Conditions (Scotland) Act 2003 (see S.I. 2009/729).

The Order also sets out the procedure for exercising those installation rights.

Article 5 requires notice of an installation to be provided in the form contained in Schedule 1.

Article 6 provides for objections and representations in relation to notice of a proposed installation. This includes requirements as to revised notices, which must be provided in the form contained in Schedule 2.

Article 7 sets out when work may begin on an installation, and the circumstances in which an application can be made to the sheriff to resolve disputes.

Article 8 provides that the Order does not make other owners in the tenement liable for the costs of such installations.

Article 9 requires the owner exercising installation rights under the Order to reinstate the premises as far as possible to the condition they were in prior to the work being undertaken and reimburse the cost of repairing any damage done.

Where section 17 of the 2004 Act does not apply, article 10 provides for the avoidance of doubt for access to be required to be provided to common parts of the tenement for the purpose of an installation.

Where any notice is required to be given under the Act or the Order, the requirements of section 30 of the 2004 Act (giving notice to owners) apply.

A Business and Regulatory Impact Assessment has been prepared. Copies can be obtained from the Family and Property Law Team, Scottish Government, St Andrew’s House, Regent Road, Edinburgh, EH1 3DG and online at www.legislation.gov.uk.

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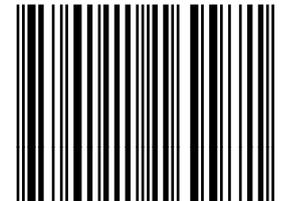
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