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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 369**

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

**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;

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- (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.