

## SCHEDULE 1

Regulation 2

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

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

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(1) 2000 c.7.

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

(3) 2011 asp 8.

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### **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<sup>(4)</sup> 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—

- (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.

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

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## **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.

# **PART 2**

## **Procedure in respect of homeowner applications**

### **Application of Part 2 and interpretation**

- 12.**—(1) This Part of the Rules applies to proceedings before the First-tier Tribunal when exercising the functions transferred to it by—

- (a) regulation 3(1) of the First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016<sup>(5)</sup>;
  - (b) regulation 3(1) of the First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Panel) Regulations 2016<sup>(6)</sup>;
- (2) In this Part of the Rules—
- “the Act” means the Property Factors (Scotland) Act 2011<sup>(7)</sup>;
  - “application” means an application under section 17(1) of the Act;
  - “hearing” includes any resumed hearing;
  - “homeowner’s concern” means the homeowner’s reason for considering that the property factor has failed to carry out the property factor’s duties or, as the case may be, to comply with the section 14 duty;
  - “the proceedings” means the proceedings in relation to the making of a decision under section 19(1), 21(1) or 23(1) of the Act (including any preliminary issue);
  - “property factor enforcement order” has the meaning given to it by section 20 of the Act; and
  - “the section 14 duty” means the duty imposed by section 14 of the Act.

### **Applications**

**13.**—(1) An application must be in writing.

(2) In addition to the homeowner’s reasons as required by section 17(2) of the Act the application must state—

- (a) the name and address of the homeowner;
- (b) that the application is made under section 17(1) of the Act;
- (c) the name, address and profession of the representative of the homeowner, if any;
- (d) the name of the property factor and, if known, the registered number of the property factor;
- (e) the address of the property factor or, if known, the name, address and profession of the property factor’s representative, if any; and
- (f) the homeowner’s reasons for considering that the property factor has failed to resolve the homeowner’s concern.

(3) The application must be signed and dated by the homeowner or by the representative of the homeowner, if any.

### **Required attachments to application**

**14.** The homeowner must attach to the application a copy of—

- (a) the notification from the homeowner to the property factor for the purposes of section 17(3) (a) of the Act;
- (b) any response in writing provided by or on behalf of the property factor to that notification;
- (c) any other correspondence between the homeowner and the property factor relating to the homeowner’s concern; and
- (d) any statement of services provided by the property factor to the homeowner as required by the property factor code of conduct.

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(5) [S.S.I. 2016/335](#).

(6) [S.S.I. 2016/336](#).

(7) [2011 asp.8](#)

### **Notification of referral to the First-tier Tribunal**

**15.**—(1) Where an application is referred to the First-tier Tribunal under section 18(1)(a) of the Act, the First-tier Tribunal must, as soon as practicable after receiving the reference, give notice to each party (or any representative)—

- (a) setting out the detail of the application in such manner as the First-tier Tribunal thinks fit; and
  - (b) specifying the day by which any written representations must be made.
- (2) The day specified for the purposes of paragraph (1)(b)—
- (a) must be at least 14 days after the day on which the notice is given; and
  - (b) may, at the request of any party, be changed to such later day as the First-tier Tribunal thinks fit.
- (3) The First-tier Tribunal must notify each party of a change mentioned in paragraph (2)(b).

### **Hearing applications together**

- 16.**—(1) The First-tier Tribunal may direct two or more applications to be heard together where—
- (a) the applications have been made by the same homeowner and relate to the same property factor; or
  - (b) the applications have been made by different homeowners and relate to the same property factor.
- (2) The First-tier Tribunal may require the parties to take the necessary steps to enable two or more applications to be heard together.

### **Inquiries**

- 17.**—(1) The First-tier Tribunal may make such inquiries as it thinks fit for the purpose of exercising its functions under the Act.
- (2) Inquiries may be made about matters other than those to which an application relates.
- (3) Inquiries must include—
- (a) consideration of any timeous written representation made by or on behalf of the homeowner and the property factor;
  - (b) where an oral hearing takes place, hearing any oral representation made by or on behalf of the homeowner or the property factor; and
  - (c) consideration of any report instructed by the First-tier Tribunal about any of the matters referred to in the application.
- (4) A representation is timeous if it is received—
- (a) by the day specified in the notice given under rule 15(1)(b);
  - (b) where a later day is specified in a notice given under rule 15(2)(b), by that later day; or
  - (c) by any later date if the First-tier Tribunal is satisfied that there is good reason for the delay.

### **Evidence**

- 18.**—(1) The First-tier Tribunal may, for the purposes of making inquiries, require the property factor, the homeowner or any other person—
- (a) to attend a hearing of the First-tier Tribunal at such time and place as the First-tier Tribunal may specify for the purposes of giving evidence;



(b) to give the First-tier Tribunal, by such day as it may specify, such documents or information as it may reasonably require.

(2) Paragraph (1) does not authorise the First-tier Tribunal to require any person to answer any question or to disclose anything which the person would be entitled to refuse to answer or disclose on grounds of confidentiality in civil proceedings in a court in Scotland.

(3) Where the First-tier Tribunal has set time limits for the lodging and serving of written evidence, it must not consider any written evidence which is not lodged or served in accordance with those time limits unless satisfied that there is good reason to do so.

(4) Where a party seeks to rely upon a copy of a document as evidence, the First-tier Tribunal may require the original document to be produced.

### **Lodging of documents etc.**

**19.**—(1) Except as otherwise provided in these Rules or as specified by the First-tier Tribunal, a party must send to the First-tier Tribunal no later than 7 days prior to any hearing—

- (a) a list of any documents and copies of the documents that the party wishes to rely upon; and
- (b) a list of any witnesses that the party wishes to call to give evidence.

(2) Where a party seeks to rely upon a document not produced in accordance with paragraph (1), the First-tier Tribunal may allow the document to be lodged if it is satisfied that there is good reason to do so.

(3) In determining whether to allow a document to be lodged late, the First-tier Tribunal will have regard to whether to do so is fair in all the circumstances.

### **Directions**

**20.**—(1) Except as otherwise provided for in these Rules, the First-tier Tribunal may at any time either on its own initiative, or on the application of any party, give directions to the parties relating to the conduct or progress of the proceedings.

(2) Directions may be given orally or in writing and must be intimated to all parties.

(3) Directions of the First-tier Tribunal may, in particular—

- (a) relate to any matter concerning the preparation for a hearing;
- (b) specify the length of time allowed for something to be done;
- (c) vary any time limit in a direction previously given by the First-tier Tribunal for anything to be done by a party;
- (d) provide for—
  - (i) a particular 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 or document which appears to be necessary for the determination of the application;
  - (iii) a witness to be heard;
  - (iv) the manner in which evidence is to be given;
- (e) require a party to lodge and serve—
  - (i) a statement of evidence which is to be given at a hearing;
  - (ii) a skeleton argument which summarises submissions to be made at a hearing and cites all the authorities which will be relied on, identifying any particular passages to be relied upon.

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(4) When making directions the First-tier Tribunal must take into account the ability of parties to comply with the directions.

### **Withdrawal of the application**

21. At any time, a homeowner may withdraw an application either orally at a hearing or by notifying in writing the First-tier Tribunal and the other parties.

### **Inspections**

22.—(1) An inspection of the land to which the application relates may be carried out at any time during the proceedings.

(2) The First-tier Tribunal may make or commission such further inspections as it considers appropriate to enable it to determine whether the property factor has complied with a property factor enforcement order.

(3) An inspection may be carried out by one or more members of the First-tier Tribunal, or by one member alone, or by any person authorised by the First-tier Tribunal to carry out such an inspection.

(4) The First-tier Tribunal must give in writing sufficient notice of an inspection to the party or parties.

(5) The parties and the representative of each party, if any, are entitled to attend the inspection.

### **Hearings**

23.—(1) The First-tier Tribunal must give not less than 14 days' notice in writing to the parties of the date, time and place of a hearing.

(2) A hearing must be held in public unless the First-tier Tribunal, on its own initiative or on an application by a party, decides that it is necessary to do otherwise to ensure a fair hearing.

(3) The First-tier Tribunal may hold a hearing and receive evidence by telephone, through a video link or by using any other method of communication if the First-tier Tribunal is satisfied that this would not prejudice the administration of justice and that there is no important public interest consideration which requires a hearing in person.

(4) At a hearing—

(a) a party or a party's representative may conduct the party's case;

(b) the parties will be heard in such order and, subject to the provisions of these Rules, according to such procedure as the First-tier Tribunal determines;

(c) a party may make representations, lead or produce evidence, and question any witness called by another party.

(5) The First-tier Tribunal may exclude from the hearing a person who is to appear as a witness until such time as that person gives evidence if it considers it is fair in all the circumstances to do so.

(6) The First-tier Tribunal at its discretion may, on its own initiative or on an application by a party, at any time and from time to time, postpone or adjourn a hearing, subject to rule 26.

(7) The First-tier Tribunal must give to the parties sufficient notice of any postponed or adjourned hearing.

### **Power to determine the proceedings without an oral hearing**

24.—(1) Subject to paragraph (2), the First-tier Tribunal may make a decision under section 19(1) of the Act (including on a preliminary issue) without an oral hearing if—

(a) the parties agree in writing to dispense with an oral hearing;

- (b) the First-tier Tribunal considers 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 First-tier Tribunal, be contrary to the interests of the parties.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

### **Exclusion of persons disrupting proceedings**

**25.**—(1) Without prejudice to any other powers it has, the First-tier Tribunal may exclude from any hearing or part of it—

- (a) any person (including a party, a representative or a supporter) whose conduct has disrupted the hearing or is likely, in the opinion of the First-tier Tribunal, to disrupt the hearing;
- (b) any person (including any party, representative or supporter) whose presence is likely, in the opinion of the First-tier Tribunal, to make it difficult for any other person to make representations or present evidence necessary for the proper conduct of the hearing.

(2) In deciding whether to exercise the power conferred by paragraph (1) the First-tier Tribunal must, apart from other considerations, 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 First-tier Tribunal decides to exclude a party it must allow any representative of that party sufficient opportunity to consult the party.

### **Adjournment of a hearing on an application by a party**

**26.**—(1) Where a party requests an adjournment of a hearing, the 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 upon in support of the application for adjournment.

(2) The First-tier Tribunal must not adjourn a hearing at the request of a party unless it is satisfied that it cannot otherwise deal with the proceedings justly.

(3) The First-tier Tribunal must not adjourn a hearing on the application of a party in order to allow the party more time to produce evidence, unless satisfied that—

- (a) the evidence relates to a matter in dispute;
- (b) it would be unjust to decide the case without permitting the party a further opportunity 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.

### **Amendment**

**27.**—(1) No application once made to the First-tier Tribunal may be amended to refer to any failure by the property factor which is not referred to in the notification from the homeowner to the property factor for the purposes of section 17(3)(a) of the Act.

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(2) A party may amend that party's application or written representations relating to the proceedings only with the consent of the First-tier Tribunal and on such conditions as the First-tier Tribunal thinks fit.

(3) Except where paragraph (4) applies, where amendment is allowed by the First-tier Tribunal, the First-tier Tribunal must intimate the amendment in writing to the other party or parties as soon as practicable.

(4) Where amendment is allowed by the First-tier Tribunal in the course of a hearing, the terms of the amendment can be made orally in the presence of the other party or parties and noted by the First-tier Tribunal.

### **Hearing case in the absence of a party**

**28.** If a party or a party's representative does not appear at a hearing the First-tier Tribunal, on being satisfied that the requirements of rule 23(1) regarding the giving of notice of a hearing have been duly complied with, may proceed to make a decision upon the representations of any party present and all the material before it.

### **Absence of a member of the First-tier Tribunal**

**29.** If, at or after the beginning of a hearing, a member of the First-tier Tribunal other than the chairing member is absent, the hearing may, with the consent of the parties, be conducted by the chairing member sitting alone or alongside another member and in that event the hearing will be deemed to be properly constituted.

### **Death or incapacity of a homeowner or property factor**

**30.—**(1) Where a homeowner or property factor dies or becomes legally incapacitated while the proceedings are pending, a person claiming to represent the party or that party's estate may apply to the First-tier Tribunal to be permitted to be sisted as a party to the proceedings.

(2) The First-tier Tribunal may continue to consider the proceedings despite the death or legal incapacity of the homeowner or the property factor and may allow that representative or successor to become a party to the proceedings.

### **Decisions on section 14 duty and compliance with property factor enforcement orders etc.**

**31.—**(1) This rule applies to any decision of the First-tier Tribunal under section 19(1), 21(1) or 23(1) of the Act.

(2) Any decision of the First-tier Tribunal—

(a) must be reached by the majority but, where the First-tier Tribunal is constituted by two members, the chairing member has the decisive vote; and

(b) must be recorded in writing in a document which—

(i) contains a full statement of the facts found by the First-tier Tribunal and the reasons for its decision;

(ii) refers to the right of appeal to the Upper Tribunal under section 46(1) of the 2014 Act; and

(iii) is signed by the chairing member (or, in the event of absence or incapacity of the chairing member, by another member of the First-tier Tribunal).

(3) The First-tier Tribunal must, as soon as reasonably practicable, make a decision by giving notice of the decision to the parties.

(4) Such a notice must be accompanied by—

- (a) the document mentioned in paragraph (2)(b);
  - (b) the property factor enforcement order or proposed property factor enforcement order, if any; and
  - (c) any report which the First-tier Tribunal considered before making the decision.
- (5) The decision of the First-tier Tribunal and a statement of reasons are to be made publicly available.

### **Signature of documents**

**32.** A requirement in these Rules 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 Rules, by electronic signature of the person who is required to sign the document.

### **Transitional**

**33.—**(1) Subject to paragraph (2), no application may be made for a determination on whether there was a failure before 1st October 2012 to carry out a property factor’s duties.

(2) The Chamber President and the First-tier Tribunal may take into account any circumstances occurring before 1st October 2012 in determining whether there has been a continuing failure to act after that date.

## **PART 3**

### **Procedure in respect of private rented applications**

#### *Procedure common to proceedings in respect of private rented applications*

### **Application of this Part of the Rules**

**34.** This Part of the Rules applies to proceedings before the First-tier Tribunal when exercising the functions transferred to it by—

- (a) regulation 3(1) of the First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Committees) Regulations 2016<sup>(8)</sup>; or
- (b) regulation 3(1) of the First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Panel) Regulations 2016<sup>(9)</sup>.

### **Interpretation**

**35.** In this Part of the Rules—

“the Act” means the Housing (Scotland) Act 2006<sup>(10)</sup>;

“the 1984 Act” means the Rent (Scotland) Act 1984<sup>(11)</sup>;

“the 1988 Act” means the Housing (Scotland) Act 1988<sup>(12)</sup>;

“application” means an application under sections 22(1) or (1A)<sup>(13)</sup> or 28A<sup>(14)</sup> of the Act;

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<sup>(8)</sup> S.S.I. 2016/337.

<sup>(9)</sup> S.S.I. 2016/338.

<sup>(10)</sup> 2006 asp 1.

<sup>(11)</sup> 1984 c.58

<sup>(12)</sup> 1988 c.43.

<sup>(13)</sup> Section 22(1A) was inserted by section 25(1)(a) of the Housing (Scotland) Act 2014 (asp 14).

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“assured tenancy” and “short assured tenancy” have the meanings assigned to them respectively by sections 12 and 32 of the 1988 Act and “statutory assured tenancy” has the meaning assigned to it by section 16 of the 1988 Act;

“assured tenancy reference to the First-tier Tribunal” means—

- (a) a reference by a landlord or a tenant under section 17(3) of the 1988 Act of a notice which has been served under section 17(2) of that Act (notice proposing terms of a statutory assured tenancy and, if appropriate, an adjustment of the rent to take account of the proposed terms);
- (b) a reference by a tenant under section 24(3) of the 1988 Act of a notice which has been served under section 24(1) of that Act (notice proposing an increase in rent under an assured tenancy);
- (c) a reference by a tenant under section 25A(4)(a)(15) of the 1988 Act of a notice which has been served on the tenant under section 25A(2) of that Act (notice proposing a new rent to take account of any sums payable by the tenant to the landlord in respect of council tax);
- (d) an application by a tenant under section 34(1) of the 1988 Act (application for a determination of the rent which the landlord might reasonably be expected to obtain under a short assured tenancy);

“dwelling-house” has the meaning given to it by section 17(7) of the 1984 Act;

“house” has the meaning given to it by section 194 of the Act;

“landlord” has the meaning given to it by section 194 of the Act;

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

“the landlord’s right of entry” means the landlord’s right of entry to the house concerned under section 181(4) of the Act;

“living accommodation” has the meaning given to it by section 194 of the Act;

“Part VII contract” means a contract within the meaning of section 63(7) of the 1984 Act which has been referred by a party to the First-tier Tribunal under section 65 or 68 of that Act;

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

“regulated tenancy reference” means a matter which is referred by a rent officer to the First-tier Tribunal under paragraph 7 or 12 of schedule 5 of the 1984 Act or an application for a certificate of fair rent which is referred by a rent officer to the First-tier Tribunal under paragraph 2 or 6 of schedule 6 of the 1984 Act or a Part VII contract;

“repairing standard enforcement order” means an order made under section 24 of the Act;

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

“tenancy” has the meaning given to it by section 194 of the Act;

“tenant” has the meaning given to it by section 194 of the Act; and

“third party applicant” has the meaning given to it by section 22(1A) of the Act.

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(14) Section 28A was inserted by section 35(4) of the Private Rented Housing (Scotland) Act 2011 (asp 14).

(15) section 25A was inserted by S.S.I. 1993/658 and amended by paragraph 16 of schedule 6 of the Housing (Scotland) Act 2006 (asp 1).

## Service

**36.—**(1) 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.

(2) A member of staff of the Scottish Courts and Tribunals Service may send a formal communication on behalf of the First-tier Tribunal.

(3) Any requirement in these Rules 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 Rules, by electronic signature of the person who is required to sign the document.

## Hearing two or more applications together

**37.—**(1) The First-tier Tribunal may direct two or more applications or an application and an assured or regulated tenancy reference to be heard together where they are under consideration by the First-tier Tribunal at the same time and relate to the same—

- (a) property; or
- (b) required work.

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

## Directions

**38.—**(1) On its own initiative or on the application of a party, the First-tier Tribunal may give directions to the parties relating to the conduct or progress of an application or an assured or regulated tenancy reference.

(2) The power to give directions is to be exercised subject to other provision in these Rules.

(3) Directions may be given orally or in writing and must be intimated to every party.

(4) Directions of the First-tier Tribunal 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 time limit given in a previous direction;
- (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 other information which appears to be necessary for the determination of the application or the assured or regulated tenancy reference;
  - (iii) witnesses to be heard;
  - (iv) the manner in which evidence is to be given;
- (e) require a party to lodge and serve—
  - (i) statements of 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, clearly identifying particular passages to be relied on;
  - (iv) a list of witnesses whom a party wishes to call to give evidence.

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(5) When making directions the First-tier Tribunal must take into account the ability of parties to comply with the directions.

### **Evidence**

**39.**—(1) The First-tier Tribunal must allow no less than 5 working days when requiring production of documents or information.

(2) The First-tier Tribunal must not consider written evidence which is lodged or served outwith a time limit it has set unless satisfied that there is good reason to do so.

(3) Where a party seeks to rely on a copy of a document as evidence, the First-tier Tribunal may require the original document to be produced.

(4) The First-tier Tribunal may allow evidence to be heard on any matter the First-tier Tribunal considers to be relevant whether or not this matter has been specified in the written representations.

### **Withdrawal of applications**

**40.**—(1) An application or an assured or regulated tenancy reference may be withdrawn by the applicant or landlord orally at a hearing or in writing by serving a notice of withdrawal on the landlord or tenant and the First-tier Tribunal.

(2) A notice of withdrawal must be in writing and may be made on a form obtained from the First-tier Tribunal.

### **Exclusion of persons disrupting proceedings**

**41.**—(1) Without prejudice to any other powers it may have, the First-tier Tribunal may exclude from a hearing, or part of it, a 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 First-tier Tribunal 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, whether the party will be adequately represented.

(3) If the First-tier Tribunal decides to exclude a party it must allow that party's representative sufficient opportunity to consult the party.

### *Procedure in respect of Repairing Standard Applications*

### **Applications under section 22(1) or (1A) of the Act**

**42.**—(1) An application under section 22(1) or (1A) of the Act must be by written notice and may be made on a form obtained from the First-tier Tribunal.

(2) Where a tenant makes an application under section 22(1) of the Act—

- (a) in addition to the tenant's reasons as required by section 22(2) of the Act (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, if known, the name, address and profession of any representative of the landlord;
  - (vi) the landlord's registration number, if known;
  - (vii) the nature of the work requiring to be done;
  - (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 under section 22(1A)—
- (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) if known, the name, address and profession of any representative of the tenant;
    - (v) if known, 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, if known, the name, address and profession of any representative of the landlord;
    - (viii) the landlord's registration number, if known;
    - (ix) the nature of the work requiring to be done;
    - (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; and
  - (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.

## **Mediation**

**43.** In cases identified by the Chamber President as suitable for mediation, the First-tier Tribunal must—

- (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.

## **Need for additional work**

**44.** Where further relevant issues come to light in the course of investigation by the First-tier Tribunal, 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 compliance with the landlord's duty.

### **Procedure for further applications**

**45.**—(1) Any application under rule 44 must provide the information set out in rule 42(2) or, as the case may be, rule 42(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 members of the First-tier Tribunal dealing with the original application are satisfied that it is expedient that the further application be made by way of amendment to the original application, they may allow such an amendment.

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

### **Inspections**

**46.**—(1) An inspection of the property may be carried out 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 First-tier Tribunal shall determine.

(2) The First-tier Tribunal 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) An inspection may be carried out by the First-tier Tribunal, a member of the First-tier Tribunal or any person authorised to do so by the First-tier Tribunal or the Chamber President.

(4) The First-tier Tribunal must give sufficient written notice of an inspection to the party or parties.

(5) Each party and any representative of a party are entitled to attend the inspection.

### **Hearings**

**47.**—(1) The First-tier Tribunal 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 First-tier Tribunal 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 Rules, the procedure shall be such as the First-tier Tribunal shall determine;

(c) a party may call witnesses, give evidence on his or her own behalf and cross-examine witnesses called by any other party.

(5) The First-tier Tribunal may postpone or adjourn a hearing, subject to rule 48.

## **Adjournment**

- 48.**—(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 First-tier Tribunal 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 First-tier Tribunal 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**

- 49.**—(1) Subject to rule 50 and on such conditions as the First-tier Tribunal thinks fit, 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;
  - (b) within 5 working days prior to the date fixed for the hearing or during the hearing, with the consent of the First-tier Tribunal.
- (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 First-tier Tribunal.
- (3) On receipt of a written amendment, the First-tier Tribunal must intimate the amendment to the other party or parties in writing.

## **Amendment to the party's written representations raising new issues of disrepair**

- 50.**—(1) Where the effect of any proposed amendment to written representations by the applicant would be to introduce a new issue of disrepair, such amendment may only be made with the consent of the First-tier Tribunal and on such conditions as the First-tier Tribunal 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 date as the First-tier Tribunal thinks fit.
- (6) The First-tier Tribunal must notify all parties of any change under paragraph (5).

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(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, the First-tier Tribunal 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 First-tier Tribunal considers that the repair is urgent.

### **Hearing case in the absence of a party**

**51.** If a party or a party's representative does not appear at a hearing, the First-tier Tribunal, on being satisfied that the requirements of rule 47 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.

### **Voting for and giving of decision**

**52.—**(1) The decision of the First-tier Tribunal on an application must be made by majority but, in the event of a tie, the chairing member has a casting vote.

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

(3) A statement of reasons must be prepared by the chairing member with the assistance of the other members of the First-tier Tribunal.

(4) Where the decision of the First-tier Tribunal is not unanimous, the chairing member must give a brief note of the opinion of the minority.

(5) In the absence or incapacity of the chairing member, the chairing member's functions under this rule may be carried out by another member of the First-tier Tribunal.

(6) The decision of the First-tier Tribunal, statement of reasons and note under paragraph (4) must be published.

### **Death, insolvency or incapacity of a party**

**53.—**(1) Where a party dies, becomes insolvent, or becomes subject to a legal incapacity, while an application is under consideration, a 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 sequestered;

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

(c) the person is the subject of another kind of arrangement analogous to those described in sub-paragraphs (a) and (b), anywhere in the world.

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

### *Procedure in respect of Landlord applications to the First-tier Tribunal*

#### **Application**

**54.—**(1) An application under section 28A of the Act must be made by written notice, and may be made on a form obtained from the First-tier Tribunal.

(2) The application must state—

(a) the name and address of the landlord;

- (b) that the application is made under section 28A of the Act;
  - (c) the address of the house in respect of which the application is made;
  - (d) the name, address and profession of any representative appointed by the landlord;
  - (e) a telephone number to enable contact to be made with the landlord or any representative appointed by the landlord and any email address which may be used for such contact;
  - (f) the landlord registration number of the landlord or that an application for registration has been made in accordance with section 83 of the Antisocial Behaviour etc. (Scotland) Act 2004<sup>(16)</sup> and has not been determined;
  - (g) the name, telephone number (if known), and email address (if known) of the tenant;
  - (h) that the tenant has been notified in writing that the landlord wishes to exercise the landlord's right of entry;
  - (i) that entry to the house is sought for the purpose of paragraph (a) of section 181(4) of the Act or of paragraph (b) of that section or of both;
  - (j) whether or not the landlord has, within the 12 months prior to the date of making of the application, made another application under section 28A of the Act in respect of the same house; and
  - (k) the name of any person the landlord intends to authorise to enter the house.
- (3) The application must be signed and dated by the landlord or by any representative appointed by the landlord.
- (4) The application must be accompanied by—
- (a) a copy of the lease or the tenancy agreement or, if these are not available, as much information about the tenancy as the landlord can give; and
  - (b) a copy of the notification referred to in paragraph (2)(h) and any subsequent correspondence relating to that notification.

### **Rejection of applications**

- 55.**—(1) The First-tier Tribunal must reject an application if—
- (a) the First-tier Tribunal considers that the application is frivolous or vexatious;
  - (b) the dispute to which the application relates has been resolved or the landlord has been able to enter the house for the purpose specified in the application;
  - (c) the First-tier Tribunal has good reason to believe that it would not be appropriate to assist either the landlord or any person the landlord intends to authorise to enter the house, or both, to gain entry to the house;
  - (d) the First-tier Tribunal considers that the application is being made for a purpose other than a purpose specified in section 181(4) of the Act; or
  - (e) the landlord has previously made an identical or substantially similar application in relation to the same house and in the First-tier Tribunal's opinion there has been no significant change in any material considerations since the identical or substantially similar application was determined.
- (2) Where the First-tier Tribunal makes a decision under section 28A(3) of the Act to reject an application the notification to the landlord under that section must state—
- (a) the name of the tenant and the address of the house;
  - (b) the reason for the decision; and

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<sup>(16)</sup> 2004 asp 8.

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- (c) that in terms of section 28A(8) of the Act the decision is final.

### **Person authorised to enter**

**56.** If the First-tier Tribunal does not consider the person the landlord intends to authorise to enter the house to be a suitable person, it may allow the landlord to amend the application in this regard.

### **Decision to assist**

**57.** Where the First-tier Tribunal decides to assist the landlord under subsection (3) of section 28A of the Act, the notice sent to the landlord and the tenant under subsection (5) of that section must, in addition to the information required under that subsection, state—

- (a) the name and address of the landlord;
- (b) the name and address of the landlord’s representative, if any;
- (c) the name of the tenant and the address of the house;
- (d) the name of any person the landlord intends to authorise to enter the house;
- (e) whether the landlord is seeking entry to the house for the purpose of—
  - (i) viewing its state and condition for the purpose of determining whether the house meets the repairing standard;
  - (ii) carrying out any work necessary to comply with the duty in section 14(1)(b) of the Act; or
  - (iii) both;
- (f) that if the tenant (without reasonable excuse) fails or refuses, within a reasonable time, to—
  - (i) respond to the First-tier Tribunal; or
  - (ii) agree a suitable date and time (or dates and times) for the landlord to exercise the landlord’s right of entry,

the First-tier Tribunal may fix a date and time (or dates and times) for the landlord to exercise the landlord’s right of entry.

**58.** Where the First-tier Tribunal makes a decision to stop assisting the landlord under section 28A(7) or section 28C(9)(17) of the Act the First-tier Tribunal must notify the landlord and the tenant and that notice must state—

- (a) the name and address of the landlord;
- (b) the name and address of the landlord’s representative, if any;
- (c) the name of the person the landlord intended to authorise to enter the house;
- (d) the name of the tenant and the address of the house;
- (e) the reason for the decision; and
- (f) that in terms of section 28A(8) of the Act the decision to stop assisting the landlord is final.

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(17) Section 28C was inserted by section 35(4) of the Private Rented Housing (Scotland) Act 2011.

### *Procedure in respect of Assured Tenancy References to the First-tier Tribunal*

#### **Assured Tenancy References to the First-tier Tribunal**

**59.**—(1) When an assured tenancy reference is made to the First-tier Tribunal, the First-tier Tribunal shall as soon as practicable thereafter serve on the landlord and the tenant a notice specifying a period of not less than 14 days from the service of the notice during which either representations in writing or a request to make oral representations may be made to the First-tier Tribunal by either party.

(2) Where within the period specified in paragraph (1), or such further period as the First-tier Tribunal may allow, the landlord or the tenant requests to make oral representations, the First-tier Tribunal shall give the landlord or the tenant an opportunity of being heard at a hearing in accordance with rule 60 below.

(3) The First-tier Tribunal may make such inquiries as they think fit and consider information supplied or representations made to them relevant to the matters to be determined by them, but shall give the parties adequate opportunity for considering such information and representations and may hold a hearing whether or not the parties have requested one.

#### **Assured Tenancy Reference Hearings**

**60.**—(1) Where an assured tenancy reference is to be subject to a hearing, the First-tier Tribunal shall appoint a date, time and place for a hearing.

(2) The First-tier Tribunal shall give not less than 10 days' notice in writing to the landlord and the tenant of the date, time and place so appointed for a hearing.

(3) A hearing shall be in public unless for special reasons the First-tier Tribunal otherwise decides.

(4) At a hearing—

- (a) a party may be heard either in person or by a person authorised by him in that behalf, whether or not that person is an advocate or a solicitor;
- (b) the parties shall be heard in such order and, subject to the provision of these Rules, the procedure shall be such as the First-tier Tribunal shall determine; and
- (c) a party may call witnesses, give evidence on the party's own behalf and cross-examine any witnesses called by the other party.

(5) The First-tier Tribunal at its discretion may on its own motion, or at the request of the parties or one of them, at any time and from time to time postpone or adjourn a hearing; but it shall not do so at the request of one party only unless, having regard to the grounds upon which and the time at which such request is made and to the convenience of the parties, it deems it reasonable to do so.

(6) The First-tier Tribunal shall give to the parties reasonable notice of the postponed or adjourned hearing.

(7) If a party does not appear at a hearing, the First-tier Tribunal, on being satisfied that the requirements of this rule regarding the giving of notice of a hearing have been duly complied with, may proceed to deal with the reference upon the representations of any party present and upon the documents and information which it may properly consider.

#### **Documents at Assured Tenancy Reference Hearings**

**61.**—(1) Where the assured tenancy reference is to be subject to a hearing, the First-tier Tribunal shall take all reasonable steps to ensure that there is supplied to each of the parties before the date of the hearing—

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- (a) a copy of, or sufficient extracts from, or particulars of, each document relevant to the reference which has been received from a party (other than a document which is already in the possession of the party or of which the party has previously been supplied with a copy); and
  - (b) a copy of each document which embodies results of enquiries made by or for the First-tier Tribunal for the purposes of that reference, or which contains relevant information in relation to rents or other tenancy terms previously determined for other houses and which has been prepared for the First-tier Tribunal for the purposes of that reference.
- (2) At a hearing where—
- (a) a document relevant to the reference is not in the possession of a party present at the hearing; and
  - (b) that party has not been supplied with a copy of, or relevant extracts from, or particulars of, the document by the First-tier Tribunal in accordance with the provisions of paragraph (1) of this rule, then unless—
    - (i) the party consents to the continuation of the hearing; or
    - (ii) the First-tier Tribunal consider that the party has a sufficient opportunity of dealing with the document without an adjournment of the hearing,

the First-tier Tribunal shall not consider the document until after it has adjourned the hearing for a period which it considers will afford the party a sufficient opportunity of dealing with the document.

(3) Where a reference is not to be subject to a hearing, the First-tier Tribunal shall supply to each of the parties a copy of, or sufficient extracts from, or particulars of, each such document as is mentioned in paragraph (1)(a) of this rule (other than a document excepted from that paragraph) and a copy of each such document as is mentioned in paragraph (1)(b) of this rule, and it shall not reach its decision until it is satisfied that each party has been given a sufficient opportunity of commenting upon each document of which a copy or from which extracts or of which particulars has or have been so supplied, and upon the other party's case.

### **Inspection of house**

**62.**—(1) The First-tier Tribunal may on its own motion and must at the request of one of the parties (subject in either case to any necessary consent being obtained) inspect the house which is the subject of the assured tenancy reference.

(2) An inspection may be made before, during or after the close of the hearing, or at such stage in relation to the consideration of the representations in writing as the First-tier Tribunal shall determine.

(3) The First-tier Tribunal must give in writing sufficient notice of an inspection to the parties.

(4) The parties and the representative of each party are entitled to attend the inspection.

(5) Where an inspection is made after the close of a hearing, the First-tier Tribunal may, if it considers that it is expedient to do so on account of a matter arising from the inspection, re-open the hearing; and if the hearing is to be re-opened, paragraph (2) of rule 60 of these Rules shall apply as it applied to the original hearing, save in so far as its requirements may be dispensed with or relaxed with the consent of the parties.

### **Decisions**

**63.**—(1) The decision of the First-tier Tribunal upon an assured tenancy reference shall be recorded in a document signed by the chairing member (or, in the event of that person's absence or incapacity, by another member of the First-tier Tribunal) which shall contain no reference to the decision being a majority (if that be the case) or to the opinion of a minority, if any.



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(2) Where the First-tier Tribunal is requested, on or before the giving or notification of the decision, to state the reasons for the decision, those reasons shall be recorded in the said document.

(3) The decision of the First-tier Tribunal and a statement of reasons, if any, are to be made publicly available.

#### **Giving of notices in respect of assured tenancy references, etc.**

**64.** Where a notice or other written matter is required under the provisions of these Rules in respect of assured tenancy references to the First-tier Tribunal to be served, given or supplied by the First-tier Tribunal to a party or parties, it shall be sufficient compliance with the Rules if the notice or matter is served, given or supplied—

- (a) by delivering it to the party or to the party's agent where a party has appointed an agent to act on the party's behalf;
- (b) by leaving it at the last known address of the party or the party's agent; or
- (c) by sending it by recorded delivery letter to the party or the party's agent at that address.

#### *Procedure in respect of regulated tenancy references*

#### **Hearings**

**65.**—(1) Where a regulated tenancy reference is to be subject to a hearing, the First-tier Tribunal shall appoint a date, time and place for the hearing.

(2) The First-tier Tribunal shall give not less than 10 days' notice in writing of the date, time and place so appointed for a hearing—

- (a) to the landlord and the tenant where the reference is a matter referred to the First-tier Tribunal under paragraph 7 of schedule 5 of the 1984 Act;
- (b) to the applicant where the reference is a matter relating to an application for the registration of a rent for a dwelling-house in accordance with a certificate of fair rent referred to the First-tier Tribunal under paragraph 9 of schedule 6 of the 1984 Act;
- (c) to the applicant where the reference is an application for a certificate of fair rent referred to the First-tier Tribunal under paragraph 2 or 6 of schedule 6 of the 1984 Act and, in a case to which paragraph 9 of that schedule applies, to the tenant;
- (d) to the lessor and the lessee where the reference is a Part VII contract referred to the First-tier Tribunal by either the lessor or the lessee; or
- (e) to the lessor and the lessee and the local authority where the reference is a Part VII contract referred to the First-tier Tribunal by the local authority.

(3) A hearing shall be in public unless for special reasons the First-tier Tribunal decides otherwise.

(4) At a hearing—

- (a) the parties shall be heard in such order and, subject to the provisions of these Rules, the procedure shall be such as the First-tier Tribunal shall determine; and
- (b) a party may call witnesses, give evidence on their own behalf and cross-examine any witnesses called by the other party.

(5) The First-tier Tribunal at its discretion may on its own motion, or at the request of the parties or one of them, at any time and from time to time postpone or adjourn a hearing; but it shall not do so at the request of one party only unless, having regard to the grounds upon which and the time at which such request is made and to the convenience of the parties, it deems it reasonable to do so.

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

(6) The First-tier Tribunal shall give to the parties such notice of any postponed or adjourned hearing as it deems to be reasonable in the circumstances.

(7) If a party does not appear at a hearing, the First-tier Tribunal, on being satisfied that the requirements of this rule regarding the giving of notice of a hearing have been duly complied with, may proceed to deal with the reference upon the representations of any party present and upon the documents and information which they may properly consider.

## **Documents**

**66.**—(1) Where a regulated tenancy reference is to be subject to a hearing, the First-tier Tribunal shall take all reasonable steps to ensure that there is supplied to each of the parties before the date of the hearing—

- (a) a copy of, or sufficient extracts from, or particulars of, any document relevant to the reference which has been received from the rent officer or from a party (other than a document which is already in the possession of the party or of which the party has previously been supplied with a copy by the rent officer); and
- (b) a copy of any document which embodies results of any enquiries made by or for the First-tier Tribunal for the purposes of that reference, or which contains relevant information in relation to fair rents previously determined for other dwelling-houses and which has been prepared for the First-tier Tribunal for the purposes of that reference.

(2) At any hearing where—

- (a) any document relevant to the reference is not in the possession of a party present at the hearing; and
- (b) that party has not been supplied with a copy of, or relevant extracts from, or particulars of, the document by the rent officer or by the First-tier Tribunal in accordance with the provisions of paragraph (1) of this rule, then unless—
  - (i) the party consents to the continuation of the hearing; or
  - (ii) the First-tier Tribunal consider that the party has a sufficient opportunity of dealing with the document without an adjournment of the hearing,

the First-tier Tribunal shall not consider the document until after it has adjourned the hearing for a period which it considers will afford the party a sufficient opportunity of dealing with the document.

(3) Where a reference is not to be subject to a hearing the First-tier Tribunal shall supply to each of the parties a copy of, or sufficient extracts from, or particulars of, any such document as is mentioned in paragraph (1)(a) of this rule (other than a document excepted from that paragraph) and a copy of any such document as is mentioned in paragraph (1)(b) of this rule, and it shall not reach its decision until it is satisfied that each party has been given a sufficient opportunity of commenting upon any document of which a copy or from which extracts or of which particulars has or have been so supplied, and upon the other party's case.

## **Inspection of dwelling-house**

**67.**—(1) The First-tier Tribunal may on its own motion and shall at the request of one of the parties (subject in either case to any necessary consent being obtained) inspect the dwelling-house which is the subject of the reference.

(2) An inspection may be made before, during or after the close of the hearing, or at such stage in relation to the consideration of the representations in writing as the First-tier Tribunal shall determine.

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(3) The First-tier Tribunal shall give such notice in writing as they deem sufficient of an inspection to the party or parties and shall allow each party and their representative to attend any inspection.

(4) Where an inspection is made after the close of a hearing the First-tier Tribunal may, if it considers that it is expedient to do so on account of any matter arising from the inspection, re-open the hearing; and if the hearing is to be re-opened paragraph (2) of rule 65 shall apply as it applied to the original hearing, save in so far as its requirements may be dispensed with or relaxed with the consent of the parties.

### **Decisions**

**68.**—(1) The decision of the First-tier Tribunal upon a reference shall be recorded in a document signed by the chairing member (or in the event of that person's absence or incapacity, by another member of the First-tier Tribunal) which shall contain no reference to the decision being a majority (if that be the case) or to any opinion of a minority.

(2) Where the First-tier Tribunal is requested, on or before the giving or notification of the decision, to state the reasons for the decision, those reasons shall be recorded in a document.

(3) This rule shall apply to the document recording the reasons as it applies to the document recording the decision.

(4) The decision of the First-tier Tribunal and a statement of reasons, if any, are to be made publicly available.

### **Giving of Notices**

**69.** Where any notice or other written matter is required under the provisions of these Rules to be given or supplied by the First-tier Tribunal to a party or parties, it shall be sufficient compliance with the Rules if the notice or matter is sent by post to the party for whom it is intended at their usual or last known address or if that party has appointed an agent to act on their behalf in relation to the reference, to that agent at the address of the agent supplied to the First-tier Tribunal.