
STATUTORY INSTRUMENTS

2005 No. 1509

HOUSING, ENGLAND

The Residential Property Tribunal (Right to Buy Determinations) Procedure (England) Regulations 2005

<i>Made</i>	- - - -	<i>6th June 2005</i>
<i>Laid before Parliament</i>		<i>13th June 2005</i>
<i>Coming into force</i>	- -	<i>4th July 2005</i>

The Secretary of State, in exercise of the powers conferred upon him by Schedule 13 to the Housing Act 2004(1), and having consulted with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(2) hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as The Residential Property Tribunal (Right to Buy Determinations) Procedure (England) Regulations 2005.

(2) These Regulations shall come into force on 4th July 2005.

(3) These Regulations apply to proceedings of a residential property tribunal to determine applications made under paragraph 11(4) of Schedule 5 of the Housing Act 1985(3) on or after 4th July 2005 in relation to dwelling-houses in England(4).

Interpretation

2. In these Regulations—

“the Act” means the Housing Act 1985;

“application” means an application under paragraph 11(4) of Schedule 5 to the Act;

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- (1) 2004 c. 34. The power to make regulations under Schedule 13 is, in relation to Wales, conferred on the National Assembly for Wales, *see* the definition of “appropriate national authority” in section 261 of the Housing Act 2004.
- (2) 1992 c. 53.
- (3) 1985 c. 78. Paragraph 11 of Schedule 5 was substituted by section 106(2) of the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28) and amended by section 181 of the Housing Act 2004.
- (4) The function of determining applications in relation to dwelling-houses in Wales continues to be conferred on the Secretary of State. That function is, however, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) (to which there are amendments not relevant to these regulations) *see* the entry in that Schedule for the Housing Act 1985. By section 267 of the Housing Act 2004 references in that Order to the Housing Act 1985 are to be treated as references to that Act as amended by virtue of the Housing Act 2004.

“case management conference” means a pre-trial review or any other meeting held by a tribunal for the purpose of managing the proceedings in respect of an application;

“landlord” means the landlord of the property;

“participant” means a party or witness or other person taking part in proceedings relating to an application or to whom an order of the tribunal is addressed;

“the property” means the dwelling-house which is the subject of the application;

“tribunal” means a residential property tribunal, and “the tribunal” in relation to an application means the tribunal by which the application is to be determined.

The overriding objective

3.—(1) When a tribunal—

- (a) exercises any power under these Regulations; or
- (b) interprets any regulation,

it shall seek to give effect to the overriding objective of dealing fairly and justly with applications which it is to determine.

(2) Dealing with an application fairly and justly includes—

- (a) dealing with it in ways which are proportionate to the complexity of the issues and to the resources of the parties;
- (b) ensuring, so far as practicable, that the parties are on an equal footing procedurally and are able to participate fully in the proceedings;
- (c) assisting any party in the presentation of his case without advocating the course he should take;
- (d) using the tribunal’s special expertise effectively; and
- (e) avoiding delay, so far as is compatible with proper consideration of the issues.

Particulars of application

4.—(1) An application shall be in writing and shall contain the following particulars—

- (a) the name and address of the applicant;
- (b) the name and address of the landlord;
- (c) the address of the property if different from the applicant’s address;
- (d) a statement of reasons for disputing the landlord’s decision that paragraph 11 of Schedule 5 to the Act applies to the property.

(2) Any of the requirements in paragraph (1) may be dispensed with or relaxed if the tribunal is satisfied that—

- (a) the particulars and documents included with an application are sufficient to enable the application to be determined; and
- (b) no prejudice will, or is likely to, be caused to any party to the application.

(3) A single qualified member of the panel⁽⁵⁾ may exercise the power conferred by paragraph (2).

(5) For “single qualified member of the panel” see paragraph 6(2) to (4) of Schedule 13 to the Housing Act 2004.

Acknowledgement of application by tribunal

5.—(1) Where an application has been made before the end of the period mentioned in paragraph 11(4) of Schedule 5 to the Act(6), the tribunal shall, as soon as practicable after receiving it, send—

- (a) an acknowledgement of receipt to the applicant;
- (b) a copy of the application and of each document accompanying it to the landlord; and
- (c) a notice to the landlord specifying the date by which the reply mentioned in regulation 6 shall be sent.

(2) The date specified in paragraph (1)(c) shall not be less than 14 days after the date the notice was sent.

Reply by landlord

6.—(1) A landlord who receives the copy documents mentioned in regulation 5(1)(b) shall by the date specified in the notice mentioned in regulation 5(1)(c) send to the tribunal a written reply acknowledging receipt of the copies and stating—

- (a) whether or not the landlord intends to oppose the application; and
- (b) the address to which documents should be sent for the purposes of the application.

(2) Subject to paragraph (3) where a landlord fails to reply in accordance with paragraph (1) the tribunal may determine the application on the basis of the information available to it at the time of making the determination.

(3) Before proceeding to a determination in accordance with paragraph (2) the tribunal shall give to the landlord not less than 14 days' notice that a determination may be so made.

(4) Where a reply in accordance with paragraph (1) is received from the landlord after the date specified in the notice mentioned in regulation 5(1)(c) but before a determination has been made, the tribunal shall take into account the information provided by the landlord.

Distribution of documents by tribunal

7. Before determining an application, a tribunal shall take all reasonable steps to ensure that each of the parties is given—

- (a) a copy of any document relevant to the proceedings (or sufficient extracts from or particulars of the document) which has been received from any other party (other than a document already in his possession or one of which he has previously been supplied with a copy); and
- (b) a copy of any document which embodies the results of any relevant enquiries made by or for the tribunal for the purposes of the proceedings.

Determination without a hearing

8.—(1) Subject to paragraph (2) a tribunal may determine an application without an oral hearing if it has given the parties not less than 28 days' notice in writing of its intention to proceed without an oral hearing.

(2) At any time before the application is determined—

- (a) the applicant or the landlord may request an oral hearing; or
- (b) the tribunal may give notice to the parties that it intends to hold an oral hearing.

(6) Paragraph 11(4) of Schedule 5 to the Housing Act 1985 provides that an application must be made before the end of the period of 56 days beginning with the service of the landlord's notice under section 124 of that Act.

(3) Where a request is made or a notice given under paragraph (2) the tribunal shall give notice of a hearing in accordance with regulation 15.

(4) A single qualified member of the panel may—

- (a) determine an application without an oral hearing;
- (b) decide whether an oral hearing is appropriate to determine an application.

Directions

9.—(1) A party may request a tribunal to give directions by order under its general power in section 230(2) of the Housing Act 2004.

(2) Any such request may be made—

- (a) orally at a case management conference or hearing;
- (b) in writing; or
- (c) by such other means as the tribunal may permit.

(3) The party making the request shall specify the directions which are sought and the reasons for seeking them.

(4) Before giving a direction addressed to a participant the tribunal shall take reasonable steps to give that participant an opportunity of objecting to, or making representations about, the direction.

(5) Where a participant to whom a direction is addressed was given no such opportunity, he may apply to the tribunal to vary it or set it aside.

(6) A single qualified member of the panel may give a direction as to any matter which is—

- (a) preliminary to an oral hearing; or
- (b) preliminary or incidental to a determination which is to be made by such a member without an oral hearing.

Supply of information and documents

10.—(1) Subject to paragraph (5), a tribunal may make an order requiring a party to supply to the tribunal any information or document specified, or of a description specified, in the order which it is in the power of that party to supply.

(2) A tribunal may make an order requiring a party to supply to another party copies of any documents supplied to the tribunal under paragraph (1).

(3) A party shall supply such information, documents or copies by such time as may be specified in, or determined in accordance with, an order made under paragraph (1) or (2).

(4) Subject to paragraph (5) a tribunal may make an order requiring any person to attend an oral hearing to give evidence and produce any documents specified, or of a description specified, in the order which it is in the power of that person to produce.

(5) Paragraphs (1) and (4) do not apply in relation to any document which a person could not be compelled to produce on the trial of an action in a court of law in England.

(6) A single qualified member of the panel may make an order under paragraph (1), (2) or (4) which is—

- (a) preliminary to an oral hearing; or
- (b) preliminary or incidental to a determination which is to be made by such a member without an oral hearing.

Failure to comply with an order to supply information and documents

11.—(1) Where a party has failed to comply with an order made under regulation 10(1), (2) or (4) the tribunal may make an order dismissing or allowing the whole or part of the application.

(2) Where an application is to be determined by a single qualified member of the panel an order under paragraph (1) may be made by such a member.

Inspection of property and neighbourhood

12.—(1) Subject to paragraph (3) a tribunal may inspect—

- (a) the property;
- (b) the approach to and neighbourhood of the property;
- (c) local transport and shopping facilities.

(2) Subject to paragraph (3)—

- (a) the tribunal shall give the parties an opportunity to attend an inspection; and
- (b) a member of the Council on Tribunals who is acting in that capacity may attend any inspection.

(3) The making of and attendance at an inspection is subject to any necessary consent being obtained.

(4) Subject to paragraph (5), where an inspection is to be made—

- (a) the tribunal shall give notice to the parties of the date, time and place of the inspection; and
- (b) such notice shall be given not less than 14 days before that date.

(5) Any of the requirements for notice in paragraph (4) may be dispensed with or relaxed with the consent of the parties, or if the tribunal is satisfied that the parties have received sufficient notice.

(6) Where an application is to be determined by a single qualified member of the panel, the functions of the tribunal under this regulation may be exercised by that member.

Case management conference

13.—(1) A tribunal may hold a case management conference.

(2) The tribunal shall give the parties not less than 14 days' notice, or a shorter notice period if the parties agree, of the date, time and place of the case management conference.

(3) At the case management conference the tribunal may order the parties to take such steps or do such things as appear to it to be necessary or desirable for securing the just, expeditious and economical determination of the application.

(4) The tribunal may postpone or adjourn a case management conference.

(5) A party may be represented at a case management conference.

(6) The functions of the tribunal under this regulation may be exercised by a single qualified member of the panel.

Other case management powers

14.—(1) Except where these Regulations provide otherwise a tribunal may—

- (a) extend the time appointed by or under these Regulations for doing any act even if the time appointed has expired if—
 - (i) it would not be reasonable to expect the participant in question to comply or have complied within that time; or

- (ii) not to extend the time would result in substantial injustice;
 - (b) permit the use of telephone, video link, or any other method of communication—
 - (i) to make representations to the tribunal;
 - (ii) for the purposes of a case management conference or hearing;
 - (c) require any participant giving written evidence to include with that evidence a signed statement that he believes the facts stated in the evidence are true;
 - (d) take any other step or make any other decision which the tribunal considers necessary or desirable for the purpose of managing the case.
- (2) A tribunal may exercise its powers under these Regulations in response to a request to do so or on its own initiative.
- (3) Where a tribunal proposes to exercise a power on its own initiative it shall give any person likely to be affected an opportunity to make representations by such date and time and in such manner as the tribunal may specify.
- (4) A single qualified member of the panel may exercise the powers under this regulation as to any matter which is—
- (a) preliminary to an oral hearing; or
 - (b) preliminary or incidental to a determination which is to be made by such a member without an oral hearing.

Notice of hearing

- 15.**—(1) A hearing shall be on the date and at the time and place appointed by the tribunal.
- (2) The tribunal shall give notice to the parties of the appointed date, time and place of the hearing.
- (3) Subject to paragraph (4) notice under paragraph (2) shall be given not less than 21 days (or such shorter period as the parties may agree) before the appointed date.
- (4) In exceptional circumstances the tribunal may, without the agreement of the parties, give less than 21 days' notice of the appointed date, time and place of the hearing; but any such notice must be given as soon as practicable before the appointed date and the notice must specify what the exceptional circumstances are.

Postponement of hearing

- 16.**—(1) Subject to paragraph (3) a tribunal may postpone an oral hearing.
- (2) The tribunal shall give reasonable notice of any postponed hearing to the parties.
- (3) Where postponement has been requested by a party the tribunal shall not postpone the hearing except where it considers it is reasonable to do so having regard to—
- (a) the grounds for the request;
 - (b) the time at which the request is made; and
 - (c) the convenience of the parties.
- (4) A single qualified member of the panel may exercise the tribunal's powers in this regulation.

Hearing

- 17.**—(1) At a hearing—
- (a) the tribunal shall determine the procedure (subject to these regulations);

- (b) any person appearing before the tribunal may do so either in person or by his representative;
- (c) the parties shall be entitled to give evidence, to call witnesses, to question any witnesses, and to address the tribunal both on the evidence and generally on the subject matter of the application;
- (d) the tribunal may receive evidence of any fact which seems to it to be relevant, even if the evidence would be inadmissible in proceedings before a court of law, and must not refuse to admit any evidence presented in due time which is admissible at law and is relevant and necessary and has not been improperly obtained; and
- (e) the tribunal may limit the questioning of any witness.

(2) At any hearing the tribunal may, if it is satisfied that it is just and reasonable to do so, permit a party to rely on reasons not previously stated, and to adduce any evidence not available at the time the landlord took the disputed decision.

(3) A tribunal may require any witness to give evidence on oath and for that purpose may administer an oath.

(4) A tribunal may adjourn a hearing but if this is done at the request of a party it must be satisfied it is reasonable to do so having regard to—

- (a) the grounds for the request;
- (b) the time at which the request is made; and
- (c) the convenience of the parties.

Hearing in public or private

18.—(1) A hearing shall be in public except—

- (a) where the tribunal is satisfied that in the circumstances of the case and subject to the overriding objective the hearing should be held in private; or
- (b) where a party has requested in writing that the hearing be in private and the Tribunal is satisfied that there is no important public interest consideration that calls for the public to be present.

(2) The tribunal may decide under paragraph (1) that part only of the hearing shall be in private or that information about the proceedings before the tribunal, the names and identifying characteristics of persons concerned in the proceedings or specified evidence given in the proceedings shall not be made public.

Failure of a party to appear at a hearing

19. Where a party fails to appear at a hearing the tribunal may proceed with the hearing if it is satisfied that—

- (a) notice has been given to that party in accordance with these Regulations; and
- (b) there is no good reason for the failure to appear.

Decisions of the Tribunal

20.—(1) This regulation applies to a decision on the determination of an application by—

- (a) a tribunal; or
- (b) a single qualified member of the panel.

(2) If a hearing was held, the decision may be given orally at the end of the hearing.

(3) A decision shall, in every case, be recorded in a document as soon as practicable after the decision has been made.

(4) A decision given or recorded in accordance with paragraphs (2) or (3) need not record the reasons for the decision.

(5) Where the document mentioned in paragraph (3) does not record the reasons for the decision, they shall be recorded in a separate document as soon as practicable after the decision has been recorded.

(6) A document recording a decision or the reasons for a decision (“a decision document”), shall be signed and dated by an appropriate person.

(7) An appropriate person may, by means of a certificate signed and dated by him, correct any clerical mistakes in a decision document or any errors arising in it from an accidental slip or omission.

(8) In this regulation “appropriate person” means—

(a) where an application was determined by a single qualified member of the panel—

(i) that member; or

(ii) in the event of his absence or incapacity, another member of the panel who was appointed by the Lord Chancellor;

(b) in any other case—

(i) the Chair of the tribunal; or

(ii) in the event of his absence or incapacity, another member of the tribunal.

(9) A copy of any decision document, and a copy of any correction certified under paragraph (7) shall be sent to each party.

Costs

21.—(1) A tribunal shall not make a determination under paragraph 12 of Schedule 13 to the Housing Act 2004 (“a costs determination”) in respect of a party without first giving that party an opportunity of making representations to the tribunal.

(2) Where an application is determined by a single qualified member of the panel he may make a costs determination in respect of a party to the proceedings on the application.

Assistance to participants

22.—(1) If a participant is unable to read or speak or understand the English language, the tribunal shall make arrangements for him to be provided, free of charge, with the necessary translations and assistance of an interpreter to enable his effective participation in the proceedings.

(2) If a participant is without hearing or speech, the tribunal shall make arrangements for him to be provided, free of charge, with the services of a sign language interpreter, lip speaker, or palantypist, to enable his effective participation in the proceedings.

(3) A participant shall be entitled to assistance under this regulation whether or not he is represented.

(4) A participant who requires assistance under this regulation shall at the earliest opportunity notify the requirement to the tribunal.

Notice and documents

23.—(1) Any document or notice required or authorised by these Regulations to be given or sent to any person shall be duly given or sent to that person—

- (a) if it is sent to his proper address by first class post or by special delivery, or by recorded delivery;
- (b) if it is sent by any other means to his proper address;
- (c) subject to paragraph (2), if with his written consent it is sent to him—
 - (i) by fax, email or other electronic communication which produces a text received in legible form;
 - (ii) by a private document delivery service.

(2) For the purposes of paragraph (1)(c) a legal representative of a participant shall be deemed to have given written consent if the reference or address for the means of fax or electronic communication or private document delivery system is shown on the legal representative's notepaper.

- (3) A person's proper address for the purposes of paragraph (1) is—
 - (a) in the case of a tribunal, the address of the office of the tribunal;
 - (b) in the case of an incorporated company or other body registered in the United Kingdom, the address of the registered or principal office of the company or body;
 - (c) in the case of any other person the usual or last known address of that person.

Time

24. Where the time specified by these Regulations for doing any act expires on a Saturday or Sunday or public holiday, it shall be treated as expiring on the next following day which is not a Saturday or Sunday or public holiday.

Frivolous and vexatious applications

25.—(1) Subject to paragraph (2), where it appears to a tribunal that an application is frivolous or vexatious or otherwise an abuse of process, the tribunal may dismiss the application in whole or in part.

(2) Before dismissing an application under paragraph (1) the tribunal shall give notice to the applicant in accordance with paragraph (3).

- (3) Any notice under paragraph (2) shall state—
 - (a) that the tribunal is minded to dismiss the application;
 - (b) the grounds on which it is minded to dismiss the application;
 - (c) the date (being not less than 21 days after the date that the notice was sent) before which the applicant may request to appear before and be heard by the tribunal on the question whether the application should be dismissed.
- (4) An application may not be dismissed under paragraph (1) unless—
 - (a) the applicant makes no request to the tribunal before the date mentioned in paragraph (3) (c) or
 - (b) where the applicant makes such a request, the tribunal has heard the applicant and the landlord, or such of them as attend the hearing, on the question of the dismissal of the application.

Persons entitled to be present at a hearing held in private

26.—(1) Subject to paragraphs (2) and (3) the following persons shall be entitled to attend a hearing held in private and to be present at the tribunal's deliberations with respect to the determination of the application—

- (a) a president or chair or other panel member not forming part of the tribunal for the purpose of the hearing;
 - (b) a member of the Council on Tribunals who is acting in that capacity;
 - (c) the staff of the Tribunal Service;
 - (d) any other person permitted by the tribunal with the consent of the parties.
- (2) None of the persons specified in paragraph (1) may take any part in the hearing or such deliberations.
- (3) The tribunal may admit persons to a hearing held in private on such terms and conditions as it considers appropriate.

Irregularities

27. Any irregularity resulting from failure by a party to comply with any provision of these Regulations or of any direction of the tribunal before the tribunal has reached its decision shall not of itself render the proceedings void.

Signature of documents

28. Where these Regulations require a document to be signed, that requirement shall be satisfied

- (a) if the signature is either written or produced by computer or other mechanical means; and
- (b) the name of the signatory appears beneath the signature in such a way that he may be identified.

Signed by authority of the First Secretary of State

6th June 2005

Kay Andrews
Parliamentary Under Secretary of State Office of
the Deputy Prime Minister

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to England only, regulate the procedure to be followed for applications made to a residential property tribunal under paragraph 11(4) of Schedule 5 (“Schedule 5”) to the Housing Act 1985 (“the Act”). That Schedule sets out exceptions to secure tenants' right to buy their home under Part 5 of the Act. The exception in paragraph 11 of Schedule 5 concerns properties particularly suitable for occupation by elderly persons. An application under paragraph 11 of Schedule 5 is the means by which a secure tenant may question the landlord's decision that the exception in that paragraph applies to his claim to exercise the right to buy. An application must be made before the end of the period of 56 days beginning with the service of the landlord's notice under section 124 of the Act.

Such applications were previously determined by the Secretary of State. Section 181 of the Housing Act 2004 (“the 2004 Act”) amends Schedule 5 to confer the jurisdiction, in relation to England, on a residential property tribunal. Sections 229 and 230 of the 2004 Act make provision about the constitution of tribunals and their general powers. Schedule 13 to the 2004 Act confers on the Secretary of State power to make regulations relating to the procedure of residential property tribunals and sets out the scope of those procedure regulations.

Regulation 2 defines terms used in the Regulations.

Regulation 3 sets out the overriding objective of dealing fairly and justly with applications.

Regulation 4 gives details of the information to be included with the application.

Regulation 5 makes provision in respect of the tribunal acknowledging an application and sending to the landlord copy documents and a notice specifying the date by which the landlord should reply to the tribunal.

Regulation 6 deals with the landlord's reply, including a tribunal's powers where a landlord fails to reply by the specified date.

Regulation 7 deals with distribution of relevant documents by the tribunal.

Regulation 8 enables a tribunal to determine an application without an oral hearing. A minimum of 28 days' notice must be given to the parties of the intention to proceed in this way. The parties have a right to request an oral hearing. A single qualified member of the panel may determine an application without an oral hearing, or may decide that an oral hearing is appropriate.

Regulation 9 makes procedural provision in respect of directions under a tribunal's general power in section 230(2) of the 2004 Act.

Regulations 10 and 11 deal with a tribunal's powers to order the supply of information and documents and with failure to comply with such an order.

Regulation 12 deals with inspection of the property and its neighbourhood.

Regulation 13 enables the tribunal to hold a case management conference (which is defined to include a pre-trial review) on not less than 14 days' notice to the parties, or a shorter period if agreed by the parties.

Regulation 14 gives details of the tribunal's remaining case management powers. Regulation 14(1) (a) allows it to extend the time specified in the Regulations for various steps in the action.

Regulations 15 deals with giving notice appointing the date, time and place of a hearing, and regulation 16 gives the tribunal power to postpone a hearing.

Regulation 17 sets out the tribunal's powers at a hearing, and regulation 18 makes provision as to when a hearing may be held in private as an exception to the general rule that it should be held in public.

Regulation 19 enables the tribunal to proceed with a hearing in the absence of a party who fails to appear.

Regulation 20 sets out how and when the tribunal will give and record decisions and reasons.

Regulation 21 provides that the tribunal shall not award costs under its powers contained in paragraph 5 of Schedule 13 to the 2004 Act without giving the party concerned the opportunity to make representations. Costs awarded may not exceed £500.

Regulation 22 requires the tribunal to make appropriate arrangements where any person taking part in the proceedings requires translation, interpretation, or other assistance to enable effective participation in the proceedings.

Regulation 23 makes provision as to due service of a document or notice required or authorised by the Regulations to be served. The provision includes the circumstances in which communication by fax or electronic communication, such as email, or by a private delivery service, such as Document Exchange, will be acceptable.

Regulation 24 clarifies that if the time specified by these Regulations for doing any act expires on a weekend or public holiday, the act will be in time if done on the next working day.

Regulation 25 gives the tribunal power to dismiss in whole or in part any application considered frivolous, vexatious, or otherwise an abuse of process after giving notice of at least 21 days to the applicant.

Regulation 26 sets out those who are entitled to be present at hearings held in private and at the tribunal's deliberations to determine the application.

Regulation 27 states that irregularities by parties will not in themselves render the proceedings void.

Regulation 28 allows mechanical or other reproduction of a signature, so long as the name of the person signing is added underneath in a way which enables him to be identified.

The Housing Act 2004 (Commencement No.4 and Transitional Provisions)(England) Order 2005 brings into force sections 181, 230, and 231 of the 2004 Act, and section 229 and Schedule 13 of that Act insofar as they are not already in force. The Order contains a transitional provision which states that an application sent to the Secretary of State within the period of 56 days after the commencement date of these Regulations shall be deemed to have been sent to a residential property tribunal.