



Statutory Document No. 483/03

THE RENT AND RATING APPEALS ACT 1986

THE PROPERTY SERVICE CHARGES (APPLICATIONS) RULES 2003

*Coming into operation*

*1st August 2003*

In exercise of the powers conferred on the Council of Ministers by section 3(3) of the Rent and Rating Appeals Act 1986<sup>1</sup>, and of all other enabling powers, the following Rules are hereby made:—

**1. Citation, commencement and interpretation**

(1) These Rules may be cited as the Property Service Charges (Applications) Rules 2003 and shall come into operation on the 1st August 2003.

(2) In these Rules —

"the Act" means the Property Service Charges Act 1989<sup>2</sup>;

"applicant" means —

- (a) the person making an application to a Commissioners, or
- (b) the plaintiff in proceedings before the High Court where the Court under section 10B of the Act has ordered the transfer to the Commissioners of so much of the proceedings as relate to the determination of a question falling within the jurisdiction of the Commissioners;

"application" means —

- (a) any application to the Commissioners mentioned in rule 2, or
- (b) a transferred application.

"the Commissioners" means the Isle of Man Rent and Rating Appeal Commissioners;

"transferred application" means so much of proceedings before the High Court as relate to a question falling within the jurisdiction of the Commissioners which have been transferred to the Commissioners for determination by order of the Court.

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<sup>1</sup> 1986 c.43

<sup>2</sup> 1989 c.14

Price £1.60 Price Band B

## **2. Applications**

(1) An application to the Commissioners under section 2(2A) or (2B) of the Act (determination of reasonableness of service charges) shall contain —

- (a) where the applicant is a tenant, the particulars specified in Part 1 of Schedule 1; and
- (b) where the applicant is a landlord, the particulars specified in Part 2 of Schedule 1.

(2) An application to the Commissioners under section 5 of the Act (limitation of service charges: expenses of proceedings), where such application is not made at the hearing, shall contain the particulars specified in Part 3 of Schedule 1.

(3) An application to the Commissioners under paragraph 8 of Schedule 1 to the Act (right to challenge landlord's choice of insurers) shall contain the particulars specified in Schedule 2 .

(4) An application to the Commissioners for an order under paragraph 4(4) of Schedule 3 to the Act (preliminary notice by tenant) shall contain the particulars specified in Part 1 of Schedule 3.

(5) An application to a Commissioners for an order under paragraph 6 of Schedule 3 to the Act (appointment of manager by the Commissioners) shall contain the particulars specified in Part 2 of Schedule 3.

(6) An application to a Commissioners for an order under paragraph 7 of Schedule 3 to the Act (variation or discharge of an order appointing a manager) shall contain the particulars specified in Part 3 of Schedule 3.

## **3. Service of application**

On receipt of an application the Commissioners shall send a copy of it and of each of the documents which accompanied it to each person named in it as a respondent.

## **4. Notice of applications**

Where the Commissioners are aware of the names and addresses of persons who may be affected by an application, or are aware that a recognised tenants' association exists for the property which is the subject of the application, the Commissioners shall give notice of the application to such persons and the secretary of such association.

## **5. Dismissal of frivolous etc. applications**

- (1) Subject to paragraph (2), where —
  - (a) it appears to a Commissioners that such an application is frivolous or vexatious or otherwise an abuse of the process of the Commissioners, or

- (b) the respondent to an application applies to the Commissioners to dismiss such an application as frivolous or vexatious or otherwise an abuse of the process of the Commissioners,

the Commissioners may (whether of its own motion or on the application of any respondent named in the application) dismiss such application, in whole or in part.

- (2) Such application may not be dismissed unless —
  - (a) the Commissioners has given to the applicant notice in writing containing a statement —
    - (i) that it is minded to dismiss the application;
    - (ii) of the grounds on which it is so minded or, as the case may be, of the grounds mentioned in the respondent's application;
    - (iii) that the applicant may, within the period of 21 days beginning with the date of issue of the notice (or such further period as the Commissioners may allow), request to appear and be heard by the Commissioners on the question whether his application should be dismissed; and
  - (b) such request as is mentioned in paragraph (2)(a)(iii) —
    - (i) is not made to the Commissioners within the period specified in that paragraph (or such further period as the Commissioners may allow); or
    - (ii) such a request is made to the Commissioners within that period (or such further period as the Commissioners may allow) and the Commissioners have heard the applicant and the respondent, or such of them as attend the hearing, on the question of the dismissal of the application.

## 6. Joining of parties

- (1) Any person who has received notice of an application under rule 4 or who may be affected by an application may apply to the Commissioners to be made a party to the application.
- (2) Any application to be joined as a party to an application may be made *ex parte*.
- (3) Nothing in this regulation shall be construed as requiring the Commissioners to make such a person a party to the application and if it appears to the Commissioners that any person, though he is affected by the application, is not sufficiently affected for it to be necessary for him to be made a party the Commissioners may refuse to make him a party.

## 7. Pre-trial review

- (1) The Commissioners may, whether of their own motion or on an application by a party, order a pre-trial review to be held in respect of an application.

- (2) At the pre-trial review the Commissioners shall —
  - (a) give any direction that appears to the Commissioners necessary or desirable for securing the just, expeditious and economical disposal of proceedings,
  - (b) endeavour to secure that the parties make all such admissions and agreements as ought reasonably to be made by them in relation to the proceedings, and
  - (c) may record in the order made on the pre-trial review any such admission or agreement or any refusal to make such admission or agreement.

(3) Where a party seeks a specific direction he shall, so far as is practicable, apply for such a direction at the pre-trial review and shall give the Commissioners not less than 7 days notice (or such shorter period as the Commissioners may allow) of his intention to do so.

(4) Where the Commissioners has received notice of any specific direction which a party intends to seek at the pre-trial review the Commissioners shall give every other party notice of the requested direction.

(5) The functions of the Commissioners in relation to, or at, a pre-trial review may be exercised by the chairman.

## **8. Hearing**

(1) A hearing shall be on the date and at the time and place appointed by the Commissioners.

(2) The Commissioners shall give notice of the appointed date, time and place to the parties not less than 21 days (or such shorter period as the parties may agree) before the appointed date, and the Commissioners have shall send a copy of the notice to any other person who has indicated to the Commissioners an intention to appear at the hearing.

(3) The Commissioners may, where they consider it appropriate, arrange that an application shall be heard together with one or more other applications.

(4) A hearing shall be in public unless, for special reasons, the Commissioners decide that a hearing or part of a hearing should be held in private.

## **9. Procedure**

- (1) At a hearing—
  - (a) the Commissioners shall determine the procedure (subject to these Rules), and the order in which the persons appearing before them are to be heard;
  - (b) a person appearing before the Commissioners may do so either in person or by a representative authorised by him, whether or not that representative is an advocate; and

- (c) a person appearing before the Commissioners may give evidence on his own behalf, call witnesses, and cross-examine any witnesses called by any other person appearing.

(2) The Commissioners shall conduct the hearing in such manner as they consider most suitable for securing the just, expeditious and economical disposal of the proceedings, and shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before a court of law.

## 10. Non-appearance

If a party or person mentioned in rule 8(2) does not appear at a hearing, the Commissioners may proceed with the hearing if they are satisfied that notice has been given to that party or person in accordance with these Rules.

## 11. Adjournment

(1) The Commissioners may postpone or adjourn a hearing at their discretion either of their own motion, or at the request of the parties or of one or more of the persons appearing before them, but they shall not do so at the request of one party or person except where they consider it reasonable to do so having regard to the grounds for the request, the time at which the request is made and the convenience of the other persons appearing before them.

(2) The Commissioners shall give reasonable notice of any postponed or adjourned hearing to the persons appearing before them.

## 12. Documents

(1) Before the date of a hearing, the Commissioners shall take all reasonable steps to ensure that each of the parties and persons making representations is given —

- (a) a copy of, or sufficient extracts from or particulars of, any document relevant to the proceedings which has been received from a party or person making representations (other than a document already in the possession of that party 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 enquiries made by or for the Commissioners for the purposes of the proceedings.

(2) At a hearing, if a person appearing before the Commissioners does not have in his possession a relevant document or a copy of, or sufficient extracts from or particulars of, a relevant document, then unless—

- (a) that person consents to the continuation of the hearing; or
- (b) the Commissioners consider that that person has a sufficient opportunity to deal with the document without an adjournment of the hearing,

the Commissioners shall adjourn the hearing for a period which they consider will give that person a sufficient opportunity to deal with the document.

### **13. Inspections**

(1) The Commissioners may (subject to any necessary consent being obtained) inspect the premises which are the subject of the proceedings.

(2) An inspection may be made before, during or after the close of a hearing, as the Commissioners may decide, and the Commissioners shall give the persons appearing before them an opportunity to attend.

(3) Notice of an inspection shall be given as if it were notice of a hearing, but the requirements for notice may be dispensed with or relaxed with the consent of the persons appearing before the Commissioners or if the Commissioners are satisfied that such persons have received sufficient notice.

(4) Where an inspection is made after the close of a hearing, the Commissioners shall, if they consider it expedient to do so on account of any matter arising from the inspection, reopen the hearing; and if the hearing is to be reopened rule 8(2) shall apply as it applied to the original hearing, except that its requirements may be dispensed with or relaxed with the consent of the parties and persons mentioned in rule 8(2) or if the Commissioners are satisfied that such parties and persons have received sufficient notice.

(5) This rule shall apply, so far as is reasonable and practicable, to any comparable premises to which the attention of the Commissioners is directed.

### **14. Decisions**

(1) The decision of the Commissioners shall be recorded in a document signed by the chairman of the Commissioners (or, in the event of his absence or incapacity, by another member of the Commissioners) which shall contain the reasons for the decision.

(2) The chairman (or, in the event of his absence or incapacity, another member of the Commissioners) shall have power, by certificate under his hand, to correct any clerical mistakes in the document or any errors arising in it from an accidental slip or omission.

(3) A copy of the document and of any such correction shall be sent by the Commissioners to each party and person making representations.

(4) A copy of the document (including any such correction) shall be kept at the office of the Commissioners, and any person may inspect it and take a copy of it at any reasonable time when that office is open for business.

### **15. Notices**

Where any notice or other document is required under these Rules to be given or sent by the Commissioners, it shall be sufficient compliance with these Rules if the notice or other document is sent by pre-paid post or by facsimile transmission

addressed to the person for whom it is intended at his usual or last known address or (if a person has appointed an agent to act on his behalf) to his agent at the address of the agent supplied to the Commissioners.

**16. Substituted service**

If any person to whom any notice or other document is required to be given or sent under these Rules —

- (a) cannot be found after all diligent enquiries have been made,
- (b) has died and has no personal representative,
- (c) is out of the British Islands and there is no known address for service in the Island, or
- (d) for any other reason service upon him cannot readily be effected in accordance with these Rules,

the Commissioners may dispense with service upon that person, or may give directions for substituted service in such other form (whether by advertisement in a newspaper or otherwise) as the Commissioners may think fit.

SCHEDULE 1

CONTENTS OF APPLICATIONS RELATING TO SERVICE CHARGES

PART I

TENANT'S APPLICATION

1. The address of the property to which the service charge which is the subject of the application relates.
2. A statement setting out whether the application is made under section 2(2A) or (2B), or both, and —
  - (a) in respect of an application under section 2(2A) —
    - (i) the expenses incurred for services, repairs, maintenance, insurance or management, whether the applicant considers such expenses to be reasonable and, if not, the applicant's reasons,
    - (ii) the services or works for which expenses were incurred, whether the applicant considers such services or works to be of a reasonable standard and, if not, the applicant's reasons, or
    - (iii) the amount payable before expenses are incurred, whether the applicant considers the amount is reasonable and, if not, the applicant's reasons;
  - (b) in respect of an application under section 2(2B) —
    - (i) the expenses to be incurred for services, repairs, maintenance, insurance or management of any specified description, whether the applicant considers them to be reasonable and, if not, the applicant's reasons,
    - (ii) the services to be provided or works to be carried out to a particular specification, whether the applicant considers such services or works would be of a reasonable standard and, if not, the applicant's reasons, or
    - (iii) the amount payable before expenses are incurred and, if the applicant considers the amount unreasonable, the applicant's reasons.
3. The name and address of the applicant and the name, address and occupation of the applicant's representative, if any.
4. The name and address of the landlord and, if that address is not in the Island, an address in the Island at which notices may be served (if known to the applicant).
5. The name and address of every person known to the applicant who is or may be liable by way of service charge for any part of the expenditure which is or may be included in the service charge and, where a recognised tenants' association exists in respect of the property to which the service charge which is the subject of the application relates, the name and address of the secretary of the association.
6. A copy of the lease or other document under which the service charge is payable.
7. Either a copy of the disputed demand for payment of the service charge and a statement of the period to which it is attributable; or, if no such demand has been made, a copy of any notification specifying services which are to be provided or works which are to be carried out and, if known, the likely cost of such works or services.
8. The matters upon which the applicant intends to rely in support of his application; and where he intends to rely on any document, a copy of that document.
9. Whether the applicant intends to apply at the hearing for an order under section 5 of the Act (limitation of service charges: expenses of proceedings).
10. The date of the application.



PART 2

LANDLORD'S APPLICATION

1. The address of the property to which the service charge which is the subject of the application relates.
2. A statement setting out whether the application is made under section 2(2A) or (2B), or both, and —
  - (a) in respect of an application under section 2(2A) —
    - (i) the expenses incurred for services, repairs, maintenance, insurance or management and the applicant's reasons for considering such expenses reasonable,
    - (ii) the services or works for which expenses were incurred and the applicant's reasons for considering the services or works to be of a reasonable standard, or
    - (iii) the amount payable before expenses are incurred and the applicant's reasons for considering such amount reasonable;
  - (b) in respect of an application under section 2(2B) —
    - (i) the expenses to be incurred for services, repairs, maintenance, insurance or management of any specified description and the applicant's reasons for considering such expenses reasonable.
    - (ii) the services to be provided or works to be carried out to a particular specification and the applicant's reasons for considering that such services or works would be of a reasonable standard, or
    - (iii) the amount payable before expenses are incurred which the applicant considers would be reasonable and the applicant's reasons.
3. The name and address of the applicant and the name, address and occupation of the applicant's representative, if any.
4. The name and address (where known to the applicant) of each respondent and each other person who is or may be liable by way of service charge for any part of the expenditure charged for in a service charge and the total number of dwellings in respect of which the same or substantially the same service charge is payable and where a recognised tenants' association exists in respect of the property to which the service charge relates, the name and address of the secretary of the association.
5. (1) Subject to sub-paragraph (2), a copy of the lease or leases, or other document under which the service charge is payable and any demand for payment of the disputed service charge showing —
  - (a) in the case of an application where a demand for payment of a service charge has been made, the amount of the service charge, the individual items included in the charge and the date when payment is due;
  - (b) in the case of an application where a service charge or a demand for payment of the service charge has not yet been made —
    - (i) the amount, or likely amount, to be included in the service charge,
    - (ii) the individual items or estimated individual items to be included in the charge, and
    - (iii) the date when such amount will, or may, be due for payment.
- (2) Where the application relates to more than one dwelling and the leases or other documents and the demands for payment of the service charge for each such dwelling are in the same or substantially the same terms, the applicant need not provide such documents for each dwelling providing that the applicant does provide a specimen lease or other document and demand for payment accompanied by a statement —

- (a) specifying those respects in which such documents differ from the corresponding documents for all the other dwellings concerned in the application, and
  - (b) confirming that in all other respects such documents are the same.
6. A breakdown of the amount of such of the expenses incurred or, as the case may be, to be incurred for services, repairs, maintenance, insurance or management as together comprise the service charge, so as to show how the service charge and each element of it is calculated.
  7. The matters upon which the applicant intends to rely in support of his application; and where he intends to rely on any document, a copy of that document.
  8. The date of the application.

### PART 3

#### TENANT'S APPLICATION FOR AN ORDER UNDER SECTION 5

1. The address of the property in respect of which the service charge is payable.
2. The name and address of the applicant and the name, address and occupation of the applicant's representative, if any.
3. The name and address of the respondent landlord and, if that address is not in the Island, an address in the Island at which notices may be served (if known to the applicant).
4. The name and address (where known to the applicant) of every other party to the proceedings in respect of which the tenant seeks an order that the landlord's expenses incurred in proceedings before the Commissioners are not to be regarded as relevant expenses to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
5. The name and address of every person known to the applicant who is or may be liable by way of service charge for any part of the expenses and, where a recognised tenants' association exists in respect of the property to which the service charge which is the subject of the application relates, the name and address of the secretary of the association.
6. A copy of the service charge demand (including, if known, a statement of the amount of the expenses incurred by the landlord in connection with proceedings before the Commissioners) in respect of which the applicant seeks an order.
7. A copy of the lease or other document under which the service charge, including the landlord's expenses incurred in proceedings before the Commissioners, is payable.
8. A copy of the decision of the Commissioners in the proceedings in respect of which the expenses incurred by the landlord are included or are to be included in the service charge and in respect of which the applicant seeks an order.
9. The matters upon which the applicant intends to rely in support of his application; and where he intends to rely on any document, a copy of that document.
10. The date of the application.

Rule 2(3).

## SCHEDULE 2

### CONTENT OF APPLICATION TO CHALLENGE LANDLORD'S CHOICE OF INSURERS

1. The address of the dwelling of which insurance is the subject of the application and, where the dwelling is not a house and forms part of a building, the address of the building.
2. A statement setting out the dispute which is the subject of the application including —
  - (a) whether it is alleged by the applicant that the insurance which is available from the nominated insurer for insuring the tenant's dwelling is unsatisfactory in any respect and, if so, in what respect,
  - (b) whether it is alleged by the applicant that the premiums in respect of any such insurance are excessive and, if so, in what respect,
  - (c) the amount of the premiums payable in respect of the insurance available from the nominated insurer,
  - (d) the cover provided by the insurance policy, and
  - (e) the period to which the insurance is attributable.
3. The name and address of the applicant and the name, address and occupation of the applicant's representative, if any.
4. The name and address of the respondent landlord and, if that address is not in the Island, an address in the Island at which notices may be served (if known to the applicant).
5. Where the dwelling forms part of a building which contains other dwellings, the name and address of every tenant or other person within that building who is known to the applicant who is or may be required to pay for or contribute to the expenses of the same or substantially the same insurance and, where a recognised tenants' association exists in respect of the building, the name and address of the secretary of the association.
6. A copy of the lease under which the tenant is required to insure the dwelling with an insurer nominated by the landlord.
7. A copy of the insurance policy if this is within the possession of the applicant or can reasonably be obtained by the applicant.
8. The matters upon which the applicant intends to rely in support of his application; and where he intends to rely on any document, a copy of that document.
9. The date of the application.

Rule 2(4)-(6).

### SCHEDULE 3

#### CONTENT OF APPLICATION UNDER SCHEDULE 3 TO THE ACT

##### PART 1

#### CONTENT OF TENANT'S APPLICATION TO DISPENSE WITH SERVICE OF PRELIMINARY NOTICE

1. The address of the property which is to be the subject of an application for an order under Schedule 3 to the Act.
2. A statement setting out the grounds of the application to dispense with service of a preliminary notice, including in particular, details of the applicant's attempts to ascertain the name and address of the landlord or an address in the Island at which a notice might be served.
3. The name and address of the applicant and the name, address and occupation of the applicant's representative, if any.
4. The name and address of every person known to the applicant who is likely to be affected by the application, including but not limited to, the other tenants of flats contained in the property, any mortgagee or superior landlord of the landlord and, where a recognised tenants' association exists in respect of the property to which the application relates, the name and address of the secretary of the association.
5. The date of the application.

##### PART 2

#### CONTENT OF TENANT'S APPLICATION FOR APPOINTMENT OF A MANAGER

1. The address of the property which is the subject of the application.
2. A statement setting out —
  - (a) the grounds of the application for an order to appoint a manager,
  - (b) the name, address and qualifications of the person it is desired to be appointed manager of the premises, and
  - (c) the functions which it is desired that the manager should carry out.
3. The name and address of the applicant and the name, address and occupation of the applicant's representative, if any.
4. The name and address of the respondent landlord and, if that address is not in the Island, an address in the Island at which notices may be served (if known to the applicant).
5. The name and address of every person known to the applicant who is likely to be affected by the application, including, but not limited to, the other tenants of flats contained in the property, any mortgagee or superior landlord of the landlord and, where a recognised tenants' association exists in respect of the property to which the application relates, the name and address of the secretary of the association.
6. A copy of the applicant's lease of his dwelling.
7. Except in a case to which paragraph 8 applies —
  - (a) a copy of the notice under paragraph 3 of Schedule 3 to the Act (preliminary notice by tenant) served by the applicant on the landlord; and
  - (b) a copy of any document received by the applicant in response to that notice.
8. Where a tenant has made an application under paragraph 4(4) of Schedule 3 to the Act to dispense with the requirement to serve a notice under paragraph 4 of that Schedule (preliminary notice by tenant) the application shall contain —
  - (a) if the application under paragraph 4(4) has not yet been determined, a copy of that application, or

- (b) if the application under paragraph 4(4) has been determined, the following information —
- (i) where the Commissioners have given directions as to the service of other notices or the taking of other steps, a statement of the notices served or the other steps taken by the applicant in accordance with their direction; or
  - (ii) where the Commissioners have dispensed with service, a statement to that effect.

9. A statement of the grounds on which the Commissioners will be asked to make an order under paragraph 6 of Schedule 3 to the Act and the matters that will be relied on by the applicant for the purpose of establishing those grounds.

10. The date of the application.

### PART 3

#### CONTENT OF APPLICATION TO VARY OR DISCHARGE ORDER APPOINTING A MANAGER

1. The address of the property which is the subject of the application.
2. A statement that the purpose of the application is to seek to vary or discharge an order under paragraph 6 of Schedule 3 to the Act (appointment of manager).
3. A copy of the order which the applicant seeks to vary or discharge.
4. The name and address of the applicant and the name, address and occupation of the applicant's representative, if any.
5. Where the application is made by the landlord of the premises the name and address (where known to the landlord) of every respondent which shall include every tenant of the premises.
6. Where the application is by a tenant, the name and address of the respondent landlord or the office of the landlord and, if that address is not in the Island, an address in the Island at which notices may be served (if known to the tenant).
7. The name of every person known to the applicant who is likely to be affected by the application, including but not limited to, the tenants (or, in the case of a tenant's application, the other tenants) of flats contained in the property, any mortgagee or superior landlord of the landlord and, where a recognised tenants' association exists, the name and address of the secretary of the association.
8. A statement of the grounds on which the Commissioners will be asked to vary or discharge the order and the matters which will be relied upon by the applicant in establishing those grounds; and where the applicant intends to rely on any document, a copy of that document.
9. The date of the application.

MADE

25<sup>th</sup> June

2003

Mary Williams  
Chief Secretary

## EXPLANATORY NOTE

*(This note is not part of the Rules.)*

These Rules prescribe the procedure for applications to the Isle of Man Rent and Rating Appeal Commissioners under the Property Service Charges Act 1989, ie. applications to determine the reasonableness of service charges, or making a challenge to a landlord's choice of insurers, or for the appointment of a manager of a block of flats. They also apply to cases transferred by the High Court to the Commissioners for the determination of matters within their jurisdiction.