



# Housing (Scotland) Act 2006

## 2006 asp 1

### PART 1

#### HOUSING STANDARDS

#### CHAPTER 4

##### THE REPAIRING STANDARD

##### *Landlord's duty to repair and maintain*

### 12 Tenancies to which repairing standard duty applies

- (1) This Chapter applies to any tenancy of a house let for human habitation unless it is—
- (a) a Scottish secure tenancy or a short Scottish secure tenancy,
  - (b) a tenancy of a house retained or purchased by a local authority under section 121 of the 1987 Act for use as housing accommodation,
  - (c) a tenancy of a house which is—
    - (i) on land comprised in a lease constituting—
      - (A) a 1991 Act tenancy (within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11)),
      - (B) a short limited duration tenancy (within the meaning of that Act),<sup>F1</sup>...
      - (C) a limited duration tenancy (within the meaning of that Act), and
      - [<sup>F2</sup>(D) a modern limited duration tenancy (within the meaning of that Act), or
      - (E) a repairing tenancy (within the meaning of that Act).]
    - (ii) occupied by the tenant of the relevant lease,
  - (d) a tenancy of a house on a croft (within the meaning of the Crofters (Scotland) Act 1993 (c. 44)), or

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- (e) a tenancy of a house on a holding situated outwith the crofting counties (within the meaning of that Act of 1993) to which any provision of the Small Landholders (Scotland) Acts 1886 to 1931 applies.
  - [<sup>F3</sup>(f) a tenancy of a house which does not exceed 31 days where the purpose of the tenancy is to confer on the tenant the right to occupy the house for a holiday.]
- (2) A reference in this Chapter to a tenancy refers only to a tenancy to which this Chapter applies.

#### Annotations:

##### Amendments (Textual)

- F1** Word in s. 12(1)(c)(i) repealed (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 9\(2\)\(a\)](#) (with s. 128); S.S.I. 2017/299, reg. 2, sch. (with reg. 14)
- F2** S. 12(1)(c)(i)(D)(E) inserted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 9\(2\)\(b\)](#) (with s. 128); S.S.I. 2017/299, reg. 2, sch. (with reg. 14)
- F3** S. 12(1)(f) inserted (1.3.2019) by [The Housing \(Scotland\) Act 2006 \(Modification of the Repairing Standard\) Regulations 2019 \(S.S.I. 2019/61\)](#), regs. 1(2), **2(3)**

### 13 The repairing standard

- (1) A house meets the repairing standard if—
- (a) the house is wind and water tight and in all other respects reasonably fit for human habitation,
  - (b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,
  - (c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order,
  - (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
  - (e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, <sup>F4</sup>...
  - (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire [<sup>F5</sup>, and
  - (g) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.]
  - [<sup>F6</sup>(h) the house meets the tolerable standard.]
- (2) In determining whether a house meets the standard of repair mentioned in subsection (1)(a), regard is to be had to the extent (if any) to which the house, by reason of disrepair or sanitary defects, falls short of the provisions of any building regulations.
- (3) In determining whether a house meets the standard of repair mentioned in subsection (1)(b), regard is to be had to—
- (a) the age, character and prospective life of the house, and
  - (b) the locality in which the house is situated.
- (4) The reference in subsection (1)(c) to installations in a house includes reference to installations outwith the house which, directly or indirectly, serve the house and which

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the owner is responsible for maintaining (solely or in common with others) by virtue of ownership, any real burden or otherwise.

[<sup>F7</sup>(7) In determining whether a house meets the standards of repair mentioned in subsection (1)(c) to (k) regard is to be had to any guidance issued by the Scottish Ministers in relation to—

- (a) the condition of pipes supplying water for human consumption,
- (b) electrical safety standards in relation to—
  - (i) installations for the supply of electricity, and
  - (ii) electrical fixtures, fittings and appliances,
- (c) installation of a fixed heating system,
- (d) equipment for detecting fire and for giving warning of fire or suspected fire,
- (e) the tolerable standard,
- (f) the type of emergency exit locks to be fitted to common doors in tenements,
- (g) equipment for detecting, and for giving warning of, carbon monoxide in a concentration that is hazardous to health,
- (h) the provision for, and safe access to, a food storage area and a food preparation space.]

#### Annotations:

##### Amendments (Textual)

- F4** Word in s. 13(1) repealed (1.12.2015) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 22(a)**, 104(3); [S.S.I. 2015/272](#), art. 2, Sch.
- F5** S. 13(1)(g) and word inserted (1.12.2015) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 22(b)**, 104(3); [S.S.I. 2015/272](#), art. 2, Sch.
- F6** S. 13(1)(h) inserted (1.3.2019) by [The Housing \(Scotland\) Act 2006 \(Modification of the Repairing Standard\) Regulations 2019 \(S.S.I. 2019/61\)](#), regs. 1(2), **3(2)(c)**
- F7** S. 13(7) substituted for s. 13(4A)(5)(6) (1.3.2019) by [The Housing \(Scotland\) Act 2006 \(Modification of the Repairing Standard\) Regulations 2019 \(S.S.I. 2019/61\)](#), regs. 1(2), **3(3)**

## 14 Landlord's duty to repair and maintain

- (1) The landlord in a tenancy must ensure that the house meets the repairing standard—
  - (a) at the start of the tenancy, and
  - (b) at all times during the tenancy.
- (2) The duty imposed by subsection (1) includes a duty to make good any damage caused by carrying out any work for the purposes of complying with the duty in that subsection.
- (3) The duty imposed by subsection (1)(b) applies only where—
  - (a) the tenant notifies the landlord, or
  - (b) the landlord otherwise becomes aware,that work requires to be carried out for the purposes of complying with it.
- (4) The landlord complies with the duty imposed by subsection (1)(b) only if any work which requires to be carried out for the purposes of complying with that duty is completed within a reasonable time of the landlord being notified by the tenant, or otherwise becoming aware, that the work is required.

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## 15 Application of duty in relation to flats etc.

- (1) Where a house forms part only of any premises, the reference in section 13(1)(b) to the house includes reference to any part of those premises which the owner of the house is responsible for maintaining (solely or in common with others) by virtue of ownership, any real burden or otherwise.
- (2) Nothing in subsection (1) requires the landlord to carry out any work unless any part of the premises, or anything in the premises, which the tenant is entitled to use is adversely affected by the disrepair or failure to keep in proper working order.

## 16 Exceptions to landlord's repairing duty

- (1) The duty imposed by section 14(1) does not require—
  - (a) any work to be carried out which the tenant is required by the terms of the tenancy to carry out,
  - (b) any work to be carried out for which the tenant—
    - (i) is liable by virtue of the tenant's duty to use the house in a proper manner, or
    - (ii) would be so liable but for any express undertaking on the landlord's part,
  - (c) the house to be rebuilt or reinstated in the event of destruction or damage by fire or by storm, flood or other inevitable accident, or
  - (d) the repair or maintenance of anything that the tenant is entitled to remove from the house.
- (2) The exception made by subsection (1)(a) applies only if the tenancy concerned is—
  - (a) for a period of not less than 3 years, and
  - (b) not determinable at the option of either party within 3 years of the start of the tenancy.
- (3) Where the terms of a tenancy are not agreed until after the tenancy starts, the tenancy is, for the purposes of subsection (2), to be treated as starting on the date of agreement.
- (4) A landlord is not to be treated as having failed to comply with the duty imposed by section 14(1) where the purported failure occurred only because the landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights.
- [<sup>F8</sup>(5) For the purpose of subsection (4), in relation to any work intended to be carried out to parts owned in common with other owners but where a majority of the owners has not consented to the intended work, a landlord is to be treated as lacking necessary rights.]

### Annotations:

#### Amendments (Textual)

- F8** S. 16(5) inserted (1.3.2019) by [The Housing \(Scotland\) Act 2006 \(Supplemental Provision\) Order 2019 \(S.S.I. 2019/62\)](#), arts. 1, 2

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## 17 Prohibition on contracting out

- (1) The terms of a tenancy and of any other agreement between the landlord and the tenant are of no effect in so far as they purport to—
  - (a) require the tenant to carry out, or to pay for or contribute towards the cost of, any work which the landlord requires to ensure be carried out for the purposes of complying with the duty imposed by section 14(1),
  - (b) exclude or limit that duty, or
  - (c) provide for termination of the tenancy, or impose on the tenant any penalty, disability or obligation, in the event of the tenant enforcing compliance by the landlord of that duty.
- (2) This section is subject to any contrary provision made by order under section 18.

## 18 <sup>F9</sup>Contracting out with consent of First-tier Tribunal

- (1) The <sup>F10</sup>First-tier Tribunal may, on the application of the landlord or the tenant, by order exclude or modify the application to the tenancy of any of the provisions of sections 14, 15 and 17.
- (2) An order under subsection (1) may be made only if—
  - (a) the other party under the tenancy consents, and
  - (b) the <sup>F11</sup>Tribunal, having regard to the terms of the tenancy and to all the circumstances, considers that it is reasonable to do so.

### Annotations:

#### Amendments (Textual)

- F9** S. 18 title substituted (1.12.2017) by virtue of [Housing \(Scotland\) Act 2014 \(asp 14\), ss. 17\(3\), 104\(3\); S.S.I. 2017/330, art. 3, sch.](#)
- F10** Words in s. 18(1) substituted (1.12.2017) by [Housing \(Scotland\) Act 2014 \(asp 14\), ss. 17\(2\)\(a\), 104\(3\); S.S.I. 2017/330, art. 3, sch.](#)
- F11** Word in s. 18(2)(b) substituted (1.12.2017) by [Housing \(Scotland\) Act 2014 \(asp 14\), ss. 17\(2\)\(b\), 104\(3\); S.S.I. 2017/330, art. 3, sch.](#)

## 19 Pre-tenancy inspection

The landlord must—

- (a) inspect the house before the tenancy starts for the purpose of identifying any work necessary to comply with the duty imposed by section 14(1)(a), and
- (b) notify the tenant of any such work.

### <sup>F12</sup>19A Duty to ensure regular electrical safety inspections

- (1) The landlord must ensure that regular inspections are carried out for the purpose of identifying any work which—
  - (a) relates to installations for the supply of electricity and electrical fixtures, fittings and appliances, and
  - (b) is necessary to ensure that the house meets the repairing standard.
- (2) The duty in subsection (1) is complied with if—

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- (a) an inspection has been carried out before the tenancy starts (but not earlier than 5 years before the start of the tenancy), and
  - (b) inspections are carried out during the tenancy at such intervals to ensure that there is a period of no more than 5 years between each inspection.
- (3) The landlord must—
- (a) before the start of the tenancy, provide the tenant with a copy of the record of the most recent inspection carried out, and
  - (b) provide the tenant with a copy of the record of any inspection carried out during the tenancy.
- (4) For the purposes of sections 16(4), 17, 22 and 24 and schedule 2, references to a duty under section 14(1) include the duties under this section.

**Annotations:**

**Amendments (Textual)**

**F12** Ss. 19A 19B inserted (1.12.2015) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 23(2)**, 104(3); S.S.I. 2015/272, art. 2, Sch. (with art. 3)

**19B Electrical safety inspections**

- (1) An inspection carried out in pursuance of section 19A must be carried out by a competent person.
- (2) The person carrying out the inspection must prepare a record of the inspection including the following information—
- (a) the date on which the inspection was carried out,
  - (b) the address of the house inspected,
  - (c) the name and address of the landlord or the landlord's agent,
  - (d) the name, address and relevant qualifications of the person who carried out the inspection,
  - (e) a description, and the location, of each installation, fixture, fitting and appliance inspected,
  - (f) any defect identified,
  - (g) any action taken to remedy a defect.
- (3) A copy of the record must be—
- (a) given to the landlord, and
  - (b) retained by the landlord for a period of 6 years.
- (4) The Scottish Ministers must publish guidance on the carrying out of inspections.
- (5) In determining who is competent to carry out an inspection, the landlord must have regard to the guidance.]

**Annotations:**

**Amendments (Textual)**

**F12** Ss. 19A 19B inserted (1.12.2015) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 23(2)**, 104(3); S.S.I. 2015/272, art. 2, Sch. (with art. 3)

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## **20 Tenant's right to information about landlord's duty**

- (1) The landlord must, on or before the start of a tenancy, provide the tenant with written information about the effect of this Chapter in relation to the tenancy.
- (2) The Scottish Ministers may issue guidance to such persons as they think fit about the form and content of information to be provided under subsection (1) and the manner in which the information should be provided.
- (3) Any landlord to whom such guidance is issued must have regard to it.
- (4) The Scottish Ministers may vary or revoke any such guidance.

### **[<sup>F13</sup>20A Power to modify repairing standard etc.**

- (1) The Scottish Ministers may by regulations vary or extend the repairing standard and a landlord's duty to ensure a house meets that standard.
- (2) Regulations under subsection (1) may, in particular, make provision about—
  - (a) the tenancies to which this Chapter applies,
  - (b) determining whether a house meets the repairing standard,
  - (c) carrying out inspections in relation to the repairing standard.
- (3) Regulations under subsection (1) may modify sections 12 to 14 and any other provision of this Chapter.]

#### **Annotations:**

#### **Amendments (Textual)**

**F13** S. 20A inserted (20.11.2014) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), ss. **24(1)**, 104(3); S.S.I. 2014/264, art. 2, Sch.

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 13(1)(i)(j)(k) inserted by S.S.I. 2019/61 reg. 3(2)(d)