



Housing (Scotland) Act 2006

2006 asp 1

PART 1

HOUSING STANDARDS

CHAPTER 6

MAINTENANCE

Maintenance orders

42 Maintenance orders

- (1) The local authority may by order (a “maintenance order”) require the owner of a house to prepare a plan (a “maintenance plan”) for securing the maintenance of the house to a reasonable standard over such period not exceeding 5 years as may be specified in the order.
- (2) A maintenance order may be made only if^{F1}...—
 - [^{F2}(za) a work notice has been served in relation to the house and no certificate has been granted under section 60 in relation to the work required by that notice,]
 - (a) [^{F3}the local authority considers] that any benefit arising from work carried out in pursuance of a work notice or a repairing standard enforcement order has been reduced or lost because of a lack of maintenance, or
 - (b) [^{F4}the local authority considers] that the house has not been, or is unlikely to be, maintained to a reasonable standard.
- (3) A maintenance order must require the owner of the house concerned to submit the maintenance plan, by such date as may be specified in the order, to the local authority for approval.

Textual Amendments

- F1** Words in s. 42(2) repealed (1.4.2015) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 88(a)**, 104(3); [S.S.I. 2015/122](#), **art. 2**

Changes to legislation: There are currently no known outstanding effects for the Housing (Scotland) Act 2006, Chapter 6. (See end of Document for details)

- F2** S. 42(2)(za) inserted (1.4.2015) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 88(b)**, 104(3); S.S.I. 2015/122, art. 2
- F3** Words in s. 42(2)(a) inserted (1.4.2015) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 88(c)**, 104(3); S.S.I. 2015/122, art. 2
- F4** Words in s. 42(2)(b) inserted (1.4.2015) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 88(c)**, 104(3); S.S.I. 2015/122, art. 2

Commencement Information

- I1** S. 42 in force at 1.4.2009 by [S.S.I. 2009/122](#), **art. 3**

Maintenance plans

43 Maintenance plans

A maintenance plan must—

- (a) specify the maintenance which requires to be carried out over the period during which the plan is to apply,
- (b) specify—
 - (i) any steps to be taken for the purposes of carrying out that maintenance (including any steps to be taken where anything to be maintained under the plan requires to be repaired or replaced), and
 - (ii) when any such steps are to be taken, and
- (c) set out an estimate of the costs likely to be incurred in implementing the plan.

Commencement Information

- I2** S. 43 in force at 1.4.2009 by [S.S.I. 2009/122](#), **art. 3**

44 Maintenance plans for two or more houses

- (1) A maintenance order may, where any premises consist of two or more houses, require the owners of those houses to prepare jointly a maintenance plan in relation to any part of the premises, including any part—
 - (a) which is owned in common by those owners, or
 - (b) which those owners are responsible for maintaining by virtue of a real burden or otherwise.
- (2) A maintenance plan prepared in pursuance of a maintenance order which relates to two or more houses must, in addition to the provision required by section 43, apportion the liability of each joint owner in respect of the costs of implementing the plan in such manner as the owners of those houses think fit.
- (3) Such a maintenance plan may also—
 - (a) apportion responsibility for maintaining the houses to which the plan relates in such manner as the owners of those houses think fit (or, where the plan is devised by a local authority, in such manner as it thinks fit),
 - (b) require those owners to appoint a person to manage its implementation,
 - (c) require those owners to open, and deposit sums into, a maintenance account,

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- (d) set out the arrangements for operating a maintenance account (including arrangements for authorising withdrawals from it and for winding up and closure).

Commencement Information

I3 S. 44 in force at 1.4.2009 by [S.S.I. 2009/122](#), [art. 3](#)

45 Maintenance plans for two or more houses: further provision

- (1) A maintenance order which relates to two or more houses may require the maintenance plan to make provision for securing the maintenance of any part of the premises concerned which some but not all of the owners required to prepare the plan—
 - (a) own, or
 - (b) have a responsibility to maintain by virtue of a real burden or otherwise.
- (2) But a maintenance plan prepared in pursuance of such a maintenance order may not—
 - (a) require the owner of any house to which the plan relates to do anything in relation to any part of the premises concerned which that owner does not own or have a responsibility to maintain by virtue of a real burden or otherwise, or
 - (b) despite section 44(2) and (3)(a), apportion responsibility for maintaining any part of the premises concerned or liability for the costs of such maintenance in a way which conflicts with—
 - (i) any real burdens encumbering the houses concerned,
 - (ii) the development management scheme in so far as it applies to those houses or any decision made under that scheme, or
 - (iii) the tenement management scheme in so far as it applies to those houses or any decision made under that scheme.

Commencement Information

I4 S. 45 in force at 1.4.2009 by [S.S.I. 2009/122](#), [art. 3](#)

46 Approval of maintenance plans

- (1) The local authority may—
 - (a) approve a maintenance plan submitted to it, with or without modifications,
 - (b) reject a maintenance plan and—
 - (i) make another maintenance order requiring the preparation of another maintenance plan, or
 - (ii) substitute a maintenance plan of its own devising in its place, or
 - (c) where a maintenance plan is not submitted by the date specified in a maintenance order, devise a maintenance plan for the house concerned.
- (2) The local authority may approve a maintenance plan only if it is satisfied—
 - (a) that the plan complies with section 43 and, if relevant, sections 44(2) and 45(2), and
 - (b) that implementation of the plan will secure the maintenance of the house concerned to a reasonable standard,

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and the local authority must be satisfied that any maintenance plan it devises complies with those provisions and that implementation of it will have that effect.

- (3) The local authority may not approve a maintenance plan which relates to three or more houses unless the owners of the majority of those houses have confirmed to the authority that they are content with the plan submitted for approval.
- (4) The local authority must serve notice of its decision under subsection (1) in accordance with section 62.
- (5) A copy of the plan approved (or, as the case may be, devised under paragraph (b)(ii) or (c) of subsection (1)) must be attached to that notice.
- (6) The maintenance order to which a decision under subsection (1) relates ceases to have effect on the date on which notice of the decision is served on the owner of the house concerned.

Commencement Information

I5 S. 46 in force at 1.4.2009 by [S.S.I. 2009/122](#), [art. 3](#)

47 Variation and revocation of maintenance plans

- (1) The local authority may vary a maintenance plan in such manner as it thinks fit—
 - (a) if satisfied at any time that there has been a change in circumstances which justifies such a variation, or
 - (b) before doing anything under section 49 in relation to the plan.
- (2) The local authority may vary a maintenance plan on the application of an owner of any of the houses concerned or of its own accord.
- (3) The local authority may revoke a maintenance plan if [^{F5}subsection (3A) applies or if] it is satisfied at any time—
 - (a) that implementation of the plan is no longer practicable, and
 - (b) that the plan cannot be varied so as to make implementation practicable.
- [^{F6}(3A) This subsection applies where the local authority is satisfied that a property factor (within the meaning of section 2(1) of the Property Factors (Scotland) Act 2011 (asp 8)) has been appointed to manage or maintain the premises to which the plan relates.]
- (4) The local authority must serve notice of any variation or revocation in accordance with section 62.
- (5) Where a maintenance plan is varied, a copy of the revised plan must be attached to that notice.

Textual Amendments

- F5** Words in s. 47(3) inserted (13.7.2015) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), [ss. 89\(2\)\(a\)](#), 104(3); [S.S.I. 2015/272](#), [art. 2](#), [Sch.](#)
- F6** S. 47(3A) inserted (13.7.2015) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), [ss. 89\(2\)\(b\)](#), 104(3); [S.S.I. 2015/272](#), [art. 2](#), [Sch.](#)

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Commencement Information

I6 S. 47 in force at 1.4.2009 by [S.S.I. 2009/122](#), [art. 3](#)

48 Implementation of maintenance plans

- (1) Where a maintenance plan is approved or devised under section 46, it is for the owner for the time being of the house concerned to secure the implementation of the plan during the period for which it has effect.
- (2) The local authority may do anything it thinks fit for the purposes of enabling or assisting the owner of the house to implement the maintenance plan.
- (3) Subsection (2) does not authorise the local authority to pay any sums—
 - (a) into a maintenance account otherwise than in accordance with section 50, or
 - (b) to the owner of the house to which the maintenance plan relates otherwise than by grant paid under section 51.

Commencement Information

I7 S. 48 in force at 1.4.2009 by [S.S.I. 2009/122](#), [art. 3](#)

49 Enforcement of maintenance plans

- (1) Where the local authority considers that the owner of a house which is subject to a maintenance plan has failed to—
 - (a) secure the carrying out of any maintenance required by the maintenance plan, or
 - (b) do anything else required by the plan,the local authority may itself do anything which it considers necessary or expedient for the purposes of securing the implementation of the plan.
- (2) Subsection (1) does not authorise the local authority to pay any sums—
 - (a) into a maintenance account otherwise than in accordance with section 50, or
 - (b) to any owner of a house to which the maintenance plan relates other than by way of a grant paid under section 51.

Commencement Information

I8 S. 49 in force at 1.4.2009 by [S.S.I. 2009/122](#), [art. 3](#)

Recovery of maintenance costs

50 Power of majority to recover maintenance costs

- (1) Subsection (3) applies where—
 - (a) the owners of two or more houses which form part of the same premises are responsible by virtue of a real burden or otherwise for maintaining any part of those premises and—

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- (i) those owners are required to carry out any such maintenance (whether in implementation of a maintenance plan or otherwise), or
 - (ii) a majority of those owners agree to carry out any such maintenance,
 - (b) notice has been served on each owner responsible for that maintenance requiring the owner to deposit a sum into a maintenance account representing the apportioned share of the estimated costs for which that owner will be liable,
 - (c) an owner on whom such a notice is served has not complied with such a requirement, and
 - (d) the local authority is satisfied as to the matters set out in subsection (2).
- (2) Those matters are—
- (a) that the maintenance proposed is, having regard to the state of repair of the premises, reasonable,
 - (b) that the share of estimated costs apportioned to the owner who has not complied with the requirement does not conflict with any provision about liability for or apportionment of costs contained in—
 - (i) any real burdens encumbering the houses concerned,
 - (ii) the development management scheme in so far as it applies to those houses or any decision made under that scheme, or
 - (iii) the tenement management scheme in so far as it applies to those houses or any decision made under that scheme, and
 - (c) that—
 - (i) the owner who has not complied with the requirement is unable^[F7] or unwilling] to do so,
 - (ii) it is unreasonable to require that owner to deposit the sum in question, or
 - (iii) that owner cannot, by reasonable inquiry, be identified or found.
- (3) Where this subsection applies the local authority may, on the application of any of the owners concerned, deposit in the maintenance account a sum representing the share of the estimated costs of any owner who has not complied with a requirement to make such a deposit.
- (4) Before deciding to make a deposit under subsection (3), the local authority may request the owner who has failed to comply to make representations to the authority, by such date as the authority may specify, about the owner's financial circumstances.
- (5) A notice of the type referred to in subsection (1)(b) must set out—
- (a) the maintenance which is to be carried out,
 - (b) the timetable for carrying out the maintenance, including proposed commencement and completion dates,
 - (c) the date of any requirement or agreement to carry out the maintenance; and, in the case of an agreement, the names of those by whom it was agreed,
 - (d) the estimated cost of the maintenance,
 - (e) why the estimate is considered reasonable,
 - (f) the apportioned share of the estimated costs attributable to each of the owners,
 - (g) how that apportionment is arrived at,
 - (h) the location and number of the maintenance account, and

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- (i) the date by which the owners are required to deposit the sum representing their respective apportioned shares in the maintenance account.
- (7) This section is without prejudice to any other entitlement of the owner of any house to recover sums from an owner who has not complied with a requirement set out in a notice of the type mentioned in subsection (1)(b).
- (8) The local authority must have regard to any guidance issued by the Scottish Ministers about the exercise of its functions under this section.
- (9) The Scottish Ministers may vary or revoke any such guidance.

Textual Amendments

- F7** Words in s. 50(2)(c)(i) inserted (1.3.2011) by [Housing \(Scotland\) Act 2010 \(asp 17\)](#), **ss. 150(1), 166(2)**; [S.S.I. 2011/96](#), **art. 2**, **Sch.**

Commencement Information

- I9** S. 50 in force at 1.4.2009 by [S.S.I. 2009/122](#), **art. 3**

Maintenance accounts

51 Maintenance accounts: grants

The local authority may pay grants in respect of any expenses incurred in connection with the opening, winding up or closure of a maintenance account.

Commencement Information

- I10** S. 51 in force at 1.4.2009 by [S.S.I. 2009/122](#), **art. 3**

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