



# Housing (Scotland) Act 2006

## 2006 asp 1

### PART 1

#### HOUSING STANDARDS

#### CHAPTER 1

##### HOUSING RENEWAL AREAS

###### *Designation of housing renewal areas*

#### **1 Housing renewal areas: criteria**

A local authority may by order designate any locality in its area as a housing renewal area (“HRA”) if it considers—

- (a) that a significant number of the houses in the locality are sub-standard, or
- (b) that the appearance or state of repair of any houses in the locality is adversely affecting the amenity of that locality.

#### **2 Housing renewal areas: procedure**

- (1) An order designating any locality as an HRA (an “HRA designation order”) must—
  - (a) set out the reasons for the designation by reference to section 1, and
  - (b) include—
    - (i) an HRA action plan, and
    - (ii) a map delineating the HRA.
- (2) An HRA designation order may not be made unless the Scottish Ministers have approved a draft of the proposed order.
- (3) Schedule 1 makes further provision about the procedure for making HRA designation orders.

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### **3 HRA action plans**

- (1) An HRA action plan is a strategy for securing an improvement in the condition and quality of housing in the HRA.
- (2) Such a plan must—
  - (a) identify each house in the HRA which the local authority considers to be sub-standard and, in relation to each, specify whether the local authority considers that the house—
    - (i) ought to be closed or demolished under Part 6 (houses which fail tolerable standard or constitute obstructive buildings) of the 1987 Act,
    - (ii) requires to be demolished under section 29 (dangerous buildings) of the Building (Scotland) Act 2003 (asp 8),
    - (iii) is in a state of serious disrepair and ought to be demolished, or
    - (iv) ought to have work carried out in or in relation to it for the purposes of bringing it into, and keeping it in, a reasonable state of repair,
  - (b) identify any house in the HRA which ought to have work carried out in or in relation to it for the purposes of enhancing the amenity of the HRA,
  - (c) specify—
    - (i) any standard to which any demolition required by the plan is to be carried out (including any standard to which the site of the demolished house must be cleared),
    - (ii) the work which the plan requires to be carried out,
    - (iii) any standard which must be met on completion of that work, and
    - (iv) any step which the local authority requires to be taken in carrying out that work,
  - (d) describe the general effect of Part 15 (compensation payments) of the 1987 Act and Part 2 (scheme of assistance) of this Act in so far as they apply in relation to houses identified in the plan, and
  - (e) specify the period within which the local authority intends to secure the implementation of the plan.
- (3) The work specified in an HRA action plan may include work which is intended to—
  - (a) improve the safety or security of any houses or persons,
  - (b) reduce the long-term costs of maintaining any houses, or
  - (c) enhance the amenity of any houses.
- (4) An HRA action plan may also specify work which ought to be carried out in or in relation to any house in the HRA which is adjacent to, or otherwise associated with, any house identified in it.

### **4 Variation of HRA designation order**

- (1) The local authority may, on the request of the owner of any house identified in an HRA action plan as a house in or in relation to which work ought to be carried out, vary an HRA designation order.
- (2) The local authority must consult—
  - (a) the owner concerned, and
  - (b) any other person whom it considers likely to be affected by the proposed variation,

before deciding whether to vary an HRA designation order under subsection (1).

- (3) A variation under subsection (1) may vary the HRA action plan only; and may do so only so far as it affects the house owned by the person who made the request.
- (4) The local authority may, at any time, vary an HRA designation order in a way which it considers unlikely to adversely affect any person significantly.
- (5) The local authority must give notice of any variation made under subsection (1) or (4) to—
  - (a) any person whom it considers likely to be affected by the variation, and
  - (b) such other persons as it thinks fit.
- (6) The notice must—
  - (a) describe the general effect of the variation, and
  - (b) specify the places where, and the times at which, a copy of the HRA designation order as varied is to be made available under section 7.

## **5 Revocation of HRA designation order**

- (1) The local authority must revoke an HRA designation order if it is—
  - (a) satisfied that the HRA action plan has been implemented, or
  - (b) directed to do so by the Scottish Ministers.
- (2) The local authority may, with the consent of the Scottish Ministers, otherwise revoke an HRA designation order at any time if it is satisfied that there has been a change in circumstances which justifies such a revocation.
- (3) Any work notice given for the purpose of implementing an HRA action plan is to cease to have effect on revocation of the HRA designation order which includes that plan.
- (4) The local authority must give notice of a revocation under subsection (1)(b) or (2) to any person whom it considers likely to be affected by the revocation.

## **6 Directions concerning identification of housing renewal areas**

- (1) A local authority must comply with any directions given by the Scottish Ministers concerning identification of areas suitable to be designated as HRAs.
- (2) A direction given for the purpose of subsection (1) may—
  - (a) be given generally, or
  - (b) make different provision for different cases and, in particular, for different areas, different localities, different types of local authority or in respect of any particular local authority or authorities.
- (3) Such a direction may be varied or revoked at any time.

## **7 Public access to HRA designation orders**

- (1) The local authority must make a copy of each HRA designation order in force for its area (including any variations) available for public inspection, free of charge.

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- (2) It is for the local authority to determine the form and manner in which, and the places where, a copy HRA designation order is made available; but in so doing the local authority must ensure that the copy order is made reasonably obtainable.

### *Implementation of HRA action plans*

## **8 Implementation: duties of local authority**

- (1) A local authority which has designated an HRA must take such steps as are reasonably practicable for the purposes of securing the implementation of the HRA action plan.
- (2) Those steps must include—
- (a) informing the owners and occupiers of houses identified in the HRA action plan about the way in which it intends to secure implementation of the plan, and
  - (b) from time to time, giving those owners and occupiers progress reports about the implementation of the plan.

## **9 Duty to rehouse displaced residents**

- (1) This section applies where—
- (a) a person is to be displaced permanently from any living accommodation as a result of the implementation of an HRA action plan, and
  - (b) that living accommodation was the only or main residence of that person on the day on which notice of the relevant HRA designation order was first given in accordance with schedule 1.
- (2) Where this section applies the local authority must, if so requested by the person to be displaced, ensure—
- (a) that the person is provided with suitable alternative living accommodation on reasonable terms, and
  - (b) in so far as practicable, that the living accommodation which is so provided is in, or within a reasonable distance of, the locality of the living accommodation from which the person is to be displaced.
- (3) The reference in subsection (2) to suitable alternative living accommodation is a reference to living accommodation which is suitable for occupation by the person to be displaced and any other person whose only or main residence on the day referred to in subsection (1)(b) would, but for the location of that other person's place of work or of any educational institution which the person attends, have been the living accommodation concerned.

## **CHAPTER 2**

### STRATEGIC HOUSING FUNCTIONS

## **10 Local housing strategies**

In section 89 (duty to prepare a local housing strategy) of the Housing (Scotland) Act 2001 (asp 10)—

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- (a) in subsection (5), before paragraph (a) insert—
  - “(za) improves the standard of housing in the authority’s area,”
- (b) after that subsection insert—
  - “(5A) The local housing strategy must, in particular, set out—
    - (a) a strategy for ensuring compliance with section 85(1) (duty to close, demolish or improve houses which do not meet the tolerable standard) of the Housing (Scotland) Act 1987 (c. 26),
    - (b) the authority’s policy for identifying parts of its area for designation under section 1 (housing renewal areas) of the Housing (Scotland) Act 2006 (asp 1),
    - (c) a strategy for improving the condition of houses by providing or arranging for the provision of assistance under Part 2 of the Housing (Scotland) Act 2006 (asp 1).”.

### CHAPTER 3

#### THE TOLERABLE STANDARD

## 11 Amendment of the tolerable standard

- (1) Section 86 (definition of house meeting the tolerable standard) of the 1987 Act is amended as follows.
- (2) In subsection (1)—
  - (a) after paragraph (c) insert—
    - “(ca) has satisfactory thermal insulation;”,
  - (b) in paragraph (f), after “closet” insert “or waterless closet”,
  - (c) after paragraph (g) insert—
    - “(ga) in the case of a house having a supply of electricity, complies with the relevant requirements in relation to the electrical installation for the purposes of that supply;  
  
“the electrical installation” is the electrical wiring and associated components and fittings, but excludes equipment and appliances;  
  
“the relevant requirements” are that the electrical installation is adequate and safe to use;”.
- (3) After subsection (1), insert—
  - “(1A) In construing any such reference, regard shall be had to any guidance issued by the Scottish Ministers.
  - (1B) The Scottish Ministers must issue the guidance in such manner as they consider appropriate for bringing it to the notice of local authorities and other persons with an interest.
  - (1C) The Scottish Ministers may vary or revoke any such guidance.”.
- (4) After subsection (2), insert—

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“(2A) An order under subsection (2) is to be made by statutory instrument, and no such order is to be made unless a draft of the order has been laid before and approved by resolution of the Scottish Parliament.”.

## 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), or
      - (C) a limited duration tenancy (within the meaning of that Act),
 and
    - (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
  - (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.
- (2) A reference in this Chapter to a tenancy refers only to a tenancy to which this Chapter applies.

## 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, and

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- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- (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 the owner is responsible for maintaining (solely or in common with others) by virtue of ownership, any real burden or otherwise.
- (5) In determining whether a house meets the standard of repair mentioned in subsection (1)(f), regard is to be had to any building regulations and any guidance issued by the Scottish Ministers on provision for detecting fires and for giving warning in the event of fire or suspected fire.

#### **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.

#### **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.

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## **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.

## **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 Contracting out with consent of sheriff**

- (1) The sheriff 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 sheriff, having regard to the terms of the tenancy and to all the circumstances, considers that it is reasonable to do so.



## **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.

## **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.

### *Enforcement of repairing standard*

## **21 Naming of panel and re-naming of committees**

- (1) The panel constituted under Schedule 4 of the Rent (Scotland) Act 1984 (c. 58) is to be known as the private rented housing panel.
- (2) Rent assessment committees constituted in accordance with that Schedule are to be known as private rented housing committees.
- (3) The panel, the president of the panel and those committees are—
  - (a) to continue to exercise the functions conferred on them by virtue of Part 5 of the Rent (Scotland) Act 1984 (c. 58) and Part 2 of the Housing (Scotland) Act 1988 (c. 43), and
  - (b) in addition, to exercise the functions conferred on them by this Act.
- (4) It is for the president to monitor the exercise by those committees of the functions conferred on them by this Act.
- (5) Those committees must comply with any direction, and have regard to any guidance, given by the president in connection with the exercise of those functions.
- (6) But the president may not give any such direction in relation to a particular case.
- (7) Directions or guidance given under subsection (5) may be varied or revoked at any time.
- (8) The president’s functions under this Act may, where the president is absent or incapacitated, be exercised by the vice-president of the panel.
- (9) Any reference to the panel or to any of those committees in any enactment or instrument is to be construed in accordance with subsection (1) or, as the case may be, (2).

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## **22 Application to private rented housing panel**

- (1) A tenant may apply to the private rented housing panel for determination of whether the landlord has failed to comply with the duty imposed by section 14(1)(b).
- (2) An application under subsection (1) must set out the tenant's reasons for considering that the landlord has failed to comply with that duty.
- (3) No such application may be made unless the tenant has notified the landlord that work requires to be carried out for the purpose of complying with that duty.
- (4) No such application may be made where the landlord is—
  - (a) a local authority landlord (within the meaning of the Housing (Scotland) Act 2001 (asp 10)),
  - (b) a registered social landlord (being a body registered in the register maintained under section 57 of that Act),
  - (c) Scottish Homes, or
  - (d) Scottish Water.
- (5) Schedule 2 makes further provision about the procedure for making and determining an application under this section.
- (6) Paragraph (c) of subsection (4) is to cease to have effect on the date specified in an order made under section 87(1) (power to dissolve Scottish Homes) of the Housing (Scotland) Act 2001 (asp 10).

## **23 Referral to private rented housing committee**

- (1) The president of the private rented housing panel must decide whether to—
  - (a) refer an application under section 22(1) to a private rented housing committee, or
  - (b) reject the application.
- (2) The president may reject an application only if the president considers—
  - (a) that it is vexatious or frivolous,
  - (b) where the tenant has previously made an identical or substantially similar application in relation to the same house, that there has not been a reasonable period of time between the applications, or
  - (c) that the dispute to which the application relates has been resolved.
- (3) The president must make a decision under subsection (1)—
  - (a) within 14 days of the panel's receipt of the application concerned, or
  - (b) where the president considers—
    - (i) that the decision cannot be made without further information, or
    - (ii) that there is a reasonable prospect of the dispute being resolved by the parties,by such later date as the president considers reasonable.
- (4) The president must, as soon as practicable after rejecting an application give notice of the rejection—
  - (a) to the tenant, and
  - (b) where the president is aware of the name and address of a person who acts for the tenant in relation to the application, to that person.

- (5) Such a notice must—
  - (a) set out the reasons for the rejection, and
  - (b) explain the procedure for appealing against it.

## **24 Determination by private rented housing committee**

- (1) The private rented housing committee to which a tenant’s application under section 22(1) is referred must decide whether the landlord has complied with the duty imposed by section 14(1)(b).
- (2) Where the committee decide that the landlord has failed to comply with that duty, they must by order (a “repairing standard enforcement order”) require the landlord to carry out such work as is necessary for the purposes of ensuring—
  - (a) that the house concerned meets the repairing standard, and
  - (b) that any damage caused by the carrying out of any work in pursuance of that duty or the order is made good.
- (3) A repairing standard enforcement order must specify the period within which the work required by the order must be completed.
- (4) The period so specified must be the period beginning with the date from which the order has effect within which the committee reasonably consider that the work required can be completed (but must not, in any case, be a period of less than 21 days).
- (5) A repairing standard enforcement order may specify particular steps which the committee require the landlord to take in complying with the order.
- (6) Where the committee are prevented by reason only of section 16(4) from deciding that a landlord has failed to comply with the duty imposed by section 14(1)(b), the committee must serve notice on the local authority stating that they consider the landlord to be unable to comply with that duty.
- (7) Where the sheriff has made an order under section 18(1) in relation to a tenancy—
  - (a) the committee must, when determining whether the landlord has failed to comply with the duty imposed by section 14(1)(b), treat sections 14, 15 and 17 as having been modified or excluded in the manner described in the sheriff’s order,
  - (b) a repairing standard enforcement order may not require the carrying out of any work which the duty imposed by section 14(1)(b) does not, because of that modification or exclusion, require to be carried out.

## **25 Variation and revocation of repairing standard enforcement orders**

- (1) The private rented housing committee which made a repairing standard enforcement order may, at any time—
  - (a) vary the order in such manner as they consider reasonable, or
  - (b) where they consider that the work required by the order is no longer necessary, revoke it.
- (2) Where subsection (3) applies, the committee must vary the repairing standard enforcement order in question—
  - (a) so as to extend, or further extend, the period within which the work required by the order must be completed, and

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- (b) in such other manner as they think fit.
- (3) This subsection applies where—
  - (a) the committee consider, on the submission of the landlord or otherwise, that the work required by a repairing standard enforcement order has not been, or will not be, completed during the period within which the order requires the work to be completed, and
  - (b) the committee—
    - (i) consider that satisfactory progress has been made in carrying out the work required, or
    - (ii) have received a written undertaking from the landlord stating that the work required will be completed by a later date which the committee consider satisfactory.
- (4) References in this Act (including this section) to a repairing standard enforcement order or to work required by such an order are, where the order has been varied under this section, to be treated as references to the order as so varied or, as the case may be, to work required by the order as so varied.

## **26 Effect of failure to comply with repairing standard enforcement order**

- (1) It is for the private rented housing committee to decide whether a landlord has complied with a repairing standard enforcement order made by the committee.
- (2) Where the committee decide that a landlord has failed to comply with the repairing standard enforcement order, the committee must—
  - (a) serve notice of the failure on the local authority, and
  - (b) decide whether to make a rent relief order.
- (3) The committee may not decide that a landlord has failed to comply with a repairing standard enforcement order—
  - (a) unless the period within which the order requires the work to be completed has ended, or
  - (b) if the committee are satisfied, on the submission of the landlord or otherwise—
    - (i) that the landlord is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or
    - (ii) that the work required by the order is likely to endanger any person.
- (4) Where the committee are prevented by reason only of subsection (3)(b) from deciding that a landlord has failed to comply with a repairing standard enforcement order, the committee must serve notice on the local authority stating that they consider the landlord to be unable to comply with the repairing standard enforcement order.

## **27 Rent relief orders**

- (1) A rent relief order is an order by a private rented housing committee which reduces any rent payable under the tenancy in question by such amount (not exceeding 90% of the rent which would, but for the order, be payable) as may be specified in the order.
- (2) A private rented housing committee may make a rent relief order only where they have decided that a landlord has failed to comply with a repairing standard enforcement order which has effect in relation to the house concerned.

- (3) A rent relief order does not affect the terms or validity of the tenancy to which it relates (otherwise than by reducing the rent payable under the tenancy).
- (4) The committee may decide to revoke a rent relief order at any time; and the committee must decide to do so if—
  - (a) the repairing standard enforcement order to which the rent relief order relates is revoked, or
  - (b) a certificate is granted under section 60 in relation to the work required by that repairing standard enforcement order.
- (5) The revocation of a rent relief order does not make a tenant liable to pay any rent which the tenant would, but for the rent relief order, have been liable to pay under the tenancy while the rent relief order had effect.

## **28 The repairing standard: offences**

- (1) A landlord who, without reasonable excuse, fails to comply with a repairing standard enforcement order commits an offence.
- (2) For the purposes of subsection (1), a landlord has reasonable excuse for failing to comply with a repairing standard enforcement order if—
  - (a) the landlord is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or
  - (b) the work required by the order is likely to endanger any person.
- (3) Subsection (2) does not affect the generality of the defence of reasonable excuse.
- (4) A landlord cannot be guilty of an offence under subsection (1) unless the private rented housing committee which made the repairing standard enforcement order in question has decided that the landlord has failed to comply with it (but such a decision does not establish a presumption that the landlord has committed an offence under subsection (1)).
- (5) A landlord commits an offence if the landlord enters into a tenancy or occupancy arrangement in relation to a house at any time during which a repairing standard enforcement order has effect in relation to the house.
- (6) A landlord does not commit an offence under subsection (5) if the private rented housing committee which made the order has consented to the landlord entering into the tenancy or occupancy arrangement.
- (7) A landlord who is guilty of an offence under subsection (1) or (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **29 Annual report**

- (1) The president of the private rented housing panel must, in respect of each reporting year, prepare a written report on the exercise of functions by the president, by the panel and by private rented housing committees during that year.
- (2) Each such report must report the frequency with which applications to the panel (whether valid or invalid within the terms of section 22) include complaints about the landlord's management of the tenancy.

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- (3) The president must submit each such report to the Scottish Ministers as soon as practicable after the end of the reporting year to which it relates.
- (4) The Scottish Ministers must lay before the Scottish Parliament a copy of each such report submitted to them.
- (5) A reporting year for the purposes of this section is—
  - (a) the period beginning with the day on which this section comes into force and ending with 31 December next following that date, and
  - (b) each successive calendar year.

## CHAPTER 5

### REPAIR, IMPROVEMENT AND DEMOLITION OF HOUSES

#### *Work notices and demolition notices*

#### **30 Work notices**

- (1) The local authority may require the owner of a house to carry out work in it for the purposes of—
  - (a) implementing an HRA action plan in relation to any house identified in the plan, or
  - (b) bringing any house which the local authority considers to be sub-standard (whether or not situated in an HRA) into, or keeping it in, a reasonable state of repair.
- (2) A requirement under subsection (1) must be made by serving notice (a “work notice”) in accordance with section 62.
- (3) The work notice must specify—
  - (a) the reason for the requirement (by reference, if the requirement relates to any house other than the house in which the work is to be carried out, to the condition of that other house),
  - (b) the work which requires to be carried out,
  - (c) any standard which that house is to meet on completion of the work, and
  - (d) the period within which the work must be completed.
- (4) The period so specified must be the period beginning with the date from which the notice has effect within which the local authority reasonably considers that the work required can be completed (but must not, in any case, be a period of less than 21 days).
- (5) The work notice may also specify particular steps which the local authority requires to be taken in carrying out the work required.

#### **31 Suspension of work notice**

- (1) The local authority may suspend a work notice if satisfied that carrying out the work required is likely to be detrimental to the health of any resident of the house concerned.
- (2) The local authority may lift a suspension under subsection (1) at any time.

- (3) The local authority must give notice of any—
  - (a) suspension, or
  - (b) lifting of a suspension,in accordance with section 62.
- (4) A notice under subsection (3)(b) may—
  - (a) extend the period within which the work requires to be completed by such period as the local authority considers reasonable,
  - (b) specify particular steps which the local authority requires to be taken in carrying out the work required (in addition to or in place of any such steps specified in the work notice or in any previous notice under subsection (3)(b)).

### **32 Revocation of work notice**

- (1) The local authority may revoke a work notice if—
  - (a) the house to which it relates is demolished, or
  - (b) it considers that the work required by the notice is no longer necessary for the purpose for which the notice was served.
- (2) The local authority must give notice of any such revocation in accordance with section 62.

### **33 Demolition notices**

- (1) Where a house is identified in an HRA action plan as a house which the local authority considers to be in a state of serious disrepair and ought to be demolished, the local authority may require the owner of the house to demolish it.
- (2) A requirement under subsection (1) must be made by serving notice (a “demolition notice”) in accordance with section 62.
- (3) The demolition notice must specify—
  - (a) the reason for the requirement,
  - (b) the standard to which the demolition is to be carried out (including any standard to which the site of the demolished house must be cleared), and
  - (c) the period within which the demolition must be carried out.
- (4) The period so specified must be the period beginning with the date from which the notice has effect within which the local authority reasonably considers that the demolition can be completed (but must not, in any case, be a period of less than 21 days).

### **34 Extension of period for completion of work or demolition**

- (1) The local authority may, at any time, extend the period within which any—
  - (a) work required by a work notice, or
  - (b) demolition required by a demolition notice,must be completed by such period as it considers reasonable.
- (2) But such a period may be extended only where the local authority—

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- (a) considers that satisfactory progress has been made in carrying out the work or demolition, or
  - (b) has received a written undertaking from the owner stating that the work or demolition will be completed by a later date which the authority considers satisfactory.
- (3) The local authority must give notice of any extension in accordance with section 62.

*Enforcement by local authority*

**35 Carrying out of work or demolitions by local authority**

- (1) If the owner of a house fails to comply with a work notice or a demolition notice, the local authority may carry out—
- (a) the work or the demolition required by the notice, and
  - (b) any other work which, in the course of carrying out work or demolition authorised by paragraph (a), the local authority finds to be required for the purposes of—
    - (i) implementing an HRA action plan in relation to any house identified in it, or
    - (ii) bringing any house which the local authority considers to be sub-standard (whether or not situated in an HRA) into, and keeping it in, a reasonable state of repair,
 but which it could not reasonably have known to be so required before it served the work notice or demolition notice.
- (2) The local authority may not carry out any work authorised by subsection (1)(a) unless—
- (a) the period within which the work or demolition requires to be carried out has ended, or
  - (b) the owner has given notice to the local authority—
    - (i) of being unable to comply with the work notice or demolition notice because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or
    - (ii) stating that the owner considers that carrying out the work or demolition required is likely to endanger any person.
- (3) Before carrying out any work authorised by subsection (1)(b) the local authority must give 21 days' notice of its intention to do so in accordance with section 62.
- (4) The requirement to give notice under subsection (3) does not apply if the local authority considers—
- (a) that the situation is urgent, or
  - (b) that it would otherwise be impractical to carry out work authorised by subsection (1)(a) before carrying out any work authorised by subsection (1)(b).

**36 Carrying out of work by local authority: repairing standard**

- (1) Where a private rented housing committee notifies the local authority that a landlord—



- (a) is unable to comply with the duty imposed by section 14(1)(b), or
  - (b) has failed, or is unable, to comply with a repairing standard enforcement order,
- the local authority may carry out the work specified in subsection (2).
- (2) That work is—
- (a) the work needed to bring the house concerned up to the repairing standard or, as the case may be, the work required by the repairing standard enforcement order, and
  - (b) any other work which, in the course of carrying out work required by the order, the local authority finds to be required for the purposes of enabling the work required by the order to be carried out.
- (3) Before carrying out any work authorised by subsection (1) the local authority must give 21 days' notice of its intention to do so to the landlord and the tenant under the tenancy to which the order relates.
- (4) The requirement to give notice under subsection (3) does not apply if the local authority considers—
- (a) that the situation is urgent, or
  - (b) in the case of work falling within subsection (2)(b), that it would otherwise be impractical to carry out any other work in respect of which notice has been given under subsection (3) before carrying out the work in question.

### **37 Evacuation**

- (1) Where the local authority—
- (a) is required or authorised by or under this Chapter to carry out work in, or to demolish, a house, and
  - (b) considers that doing so is likely to endanger the occupant of any land or premises,
- it must require that occupant to move from the land or premises.
- (2) A requirement under subsection (1) must be made by serving a notice on the occupant specifying—
- (a) by reference to the work or demolition which the local authority is required or authorised to carry out, the reason why the occupant is required to move, and
  - (b) the period, beginning not less than 14 days after the date on which the notice is served, within which the occupant must move.
- (3) A requirement under subsection (1) ceases to have effect if—
- (a) the sheriff refuses to grant a warrant under section 38(4) in relation to it, or
  - (b) the work or demolition concerned is completed.

### **38 Warrants for ejection**

- (1) Where an occupant has not complied with a requirement under section 37(1), the local authority may, by summary application, apply to the sheriff for a warrant for the ejection of the occupant from the land or premises in question.
- (2) No such application may be made before the expiry of the period specified in the notice served under section 37(2).

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- (3) On such an application, the sheriff may require the service of a further notice on the occupant.
- (4) The sheriff may, if satisfied that the occupant is likely to be endangered by the carrying out of the work or demolition concerned, grant a warrant of ejection requiring the occupant to move from the land or premises in question, within such period as the sheriff may determine, until the work or demolition is completed.
- (5) Such a warrant—
  - (a) may be made subject to such other conditions (including conditions with respect to payment of rent) as the sheriff thinks just and equitable, but
  - (b) where a further notice is served under subsection (3), may not require the occupant to move before the day which is 14 days after service of that notice.
- (6) No such warrant may require a person to move from any living accommodation which is that person's only or main residence unless the sheriff is satisfied that suitable alternative living accommodation on reasonable terms will be available to that person.
- (7) The reference in subsection (6) to suitable alternative living accommodation is a reference to living accommodation which is suitable for occupation by the resident and any other person whose only or main residence would, but for the location of that other person's place of work or of any educational institution which the person attends, be the living accommodation concerned.
- (8) The sheriff's decision on the application is final.
- (9) Refusal by the sheriff to grant any warrant sought under this section does not affect the validity of the work notice, demolition notice or repairing standard enforcement order in relation to which the warrant was sought.
- (10) Nothing in the Rent (Scotland) Act 1984 (c. 58) or in Part 2 of the Housing (Scotland) Act 1988 (c. 43) restricts the power of a local authority to apply for, or the power of the sheriff to grant, a warrant under subsection (4).

### **39 Unlawful occupation etc.**

- (1) A person commits an offence if the person, knowing that a requirement under section 37(1) has effect in relation to any land or premises—
  - (a) occupies it or them, or
  - (b) permits such occupation.
- (2) A person guilty of an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.
- (3) It is not an offence under subsection (1)—
  - (a) for a person to continue to occupy any land or premises which that person occupied on the day on which the requirement under section 37(1) is made, or
  - (b) to permit such a person to continue occupation.

### **40 Acquisition of houses to be demolished**

- (1) Where a local authority is authorised by section 35 to demolish a house the authority may, before carrying out the demolition, acquire the house and its site—

- (a) by agreement, or
  - (b) with the authorisation of the Scottish Ministers, compulsorily.
- (2) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) applies in relation to an acquisition under subsection (1)(b) as if that provision were contained in an Act of Parliament in force immediately before the commencement of that Act (with references in that Act to land being read as references to the house and its site).

#### **41 Sale of materials from demolished houses**

- (1) The local authority may sell any material arising from the demolition of a house in pursuance of section 35.
- (2) The local authority may set off the proceeds of any such sale against any sum recoverable under section 59 in relation to the demolition (so far as not otherwise recovered).
- (3) If those proceeds exceed the total of any such sums, the local authority must account to the owner of the house for the surplus.

### **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 the local authority considers—
  - (a) 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) 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.

##### *Maintenance plans*

#### **43 Maintenance plans**

A maintenance plan must—

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- (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.

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

#### **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

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- (iii) the tenement management scheme in so far as it applies to those houses or any decision made under that scheme.

#### **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,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.

#### **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 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.
- (4) The local authority must serve notice of any variation or revocation in accordance with section 62.

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- (5) Where a maintenance plan is varied, a copy of the revised plan must be attached to that notice.

#### **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.

#### **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.

#### *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—
    - (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 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
  - (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.

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### *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.

## **CHAPTER 7**

### RIGHT TO ADAPT RENTED HOUSES

#### **52 Right to adapt rented houses**

- (1) This section applies to any tenancy of a house let for human habitation (other than a Scottish secure tenancy or a short Scottish secure tenancy).
- (2) The tenant in a tenancy to which this section applies may carry out any work in the house—
  - (a) which the tenant considers necessary for the purpose of making the house suitable for the accommodation, welfare or employment of any disabled person who occupies, or intends to occupy, the house as a sole or main residence, or
  - (b) in respect of which a grant is payable in accordance with regulations made under section 15(1)(a) (grants for improving energy efficiency of houses) of the Social Security Act 1990 (c. 27).
- (3) But a tenant is not entitled to exercise the right set out in subsection (2) without the consent of the landlord, which must not be unreasonably withheld.
- (4) An application for consent to carry out work in pursuance of subsection (2) must specify the work which the tenant proposes to carry out.
- (5) The landlord may, on receipt of such an application—
  - (a) consent,
  - (b) consent subject to such reasonable conditions as the landlord may impose, or
  - (c) refuse consent, provided that it is not refused unreasonably.
- (6) The landlord must, within one month of receipt of such an application, serve notice of the landlord's decision on the applicant.
- (7) That notice must—
  - (a) where the landlord gives consent subject to conditions, set out those conditions and the reasons for imposing them,
  - (b) where the landlord refuses consent, set out the reason for refusal, and
  - (c) in either of those cases, explain the procedure for appealing the decision to impose conditions or, as the case may be, refuse consent.
- (8) Where a landlord fails to comply with subsection (6)—
  - (a) the landlord is to be treated as having decided to refuse consent, and
  - (b) notice of such refusal is to be treated as having been served on the applicant on the last day of the period mentioned in that subsection.



- (9) The terms of a tenancy, and of any other agreement between the landlord and the tenant in any tenancy, are of no effect in so far as they purport to negate or modify the effect of this section.
- (10) Nothing in this section entitles a tenant to carry out work for which the consent or other approval of any person is required under any other enactment unless that consent or approval has been given.
- (11) Where it is for the landlord to obtain any such consent or approval, the landlord must, if requested to do so by the tenant, take reasonable steps for the purposes of doing so (and may recover any expenses incurred in doing so from the tenant).
- (12) But the need for any such consent or approval by any person other than the landlord is not, of itself, a reasonable ground on which the landlord may impose any condition under subsection (5)(b) or, as the case may be, refuse consent under subsection (5)(c).

### **53 Matters relevant to application to carry out work under section 52**

- (1) The landlord may, in considering whether it is reasonable to consent to an application to carry out work in pursuance of section 52(2)(a) (or whether it is reasonable to impose a condition on such a consent), have regard to—
  - (a) the disabled person’s disability,
  - (b) whether the work proposed is necessary for the purpose set out in section 52(2)(a),
  - (c) the safety of the occupiers of the house or of any other premises,
  - (d) any costs which the landlord is likely to incur, directly or indirectly, as a result of the proposed work,
  - (e) whether the proposed work is likely—
    - (i) to reduce the value of the house or of any other part of any premises of which the house forms part, or
    - (ii) to make the house or any other part of such premises less suitable for letting or for sale,
  - (f) whether, if the proposed work was to be carried out, the house could be reinstated to the condition it was in before it was carried out,
  - (g) any code of practice issued by the Disability Rights Commission which relates to this section or section 52.
- (2) The landlord may, in considering whether it is reasonable to consent to an application to carry out work in pursuance of section 52(2)(b) (or whether it is reasonable to impose a condition on such a consent), have regard to the matters mentioned in paragraphs (c) to (f) of subsection (1).
- (3) A condition imposed under section 52(5)(b) may—
  - (a) specify the standard to which the work consented to must be carried out,
  - (b) require the tenant to reinstate the house at the end of the tenancy to the condition it was in before that work was carried out.
- (4) The landlord must, in considering whether to impose a condition under section 52(5)(b) as to the standard to which the proposed work must be carried out, have regard to—
  - (a) the age and condition of the house, and
  - (b) the likely cost of complying with the condition.

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- (5) It is reasonable for a landlord to refuse to consent to an application to carry out work in pursuance of section 52(2), or to impose any condition on such a consent, if the carrying out of the proposed work or, as the case may be, failure to comply with that condition, would make the landlord susceptible under any enactment or rule of law to any sanction or other remedy.
- (6) Subsection (5) applies only where the landlord has taken reasonable steps for the purposes of acquiring the right to give consent or, as the case may be, not to impose the condition without making the landlord so susceptible.
- (7) The landlord may recover from the tenant any expenses incurred by the landlord in taking any such reasonable steps (regardless of the landlord's decision on the tenant's application).

#### **54 Amendment to the Housing (Scotland) Act 2001**

In Paragraph 8 of schedule 5 to the Housing (Scotland) Act 2001 (asp 10)—

- (a) the word “and” which follows paragraph (c) is repealed,
- (b) at the end of paragraph (d) insert “and
- (e) any code of practice issued by the Disability Rights Commission which relates to this Part.”.

### **CHAPTER 8**

#### SUPPLEMENTAL PROVISIONS, INCLUDING APPEALS

##### *Supplemental*

#### **55 Power of local authority to carry out or arrange work or demolition**

A local authority may carry out, or arrange for the carrying out of, any work or demolition which any other person is required or authorised by or under this Part to carry out (but only by agreement with, and at the expense of, that other person).

#### **56 Effect of tenant moving from house**

- (1) Where—
  - (a) a person moves from any house for the purposes of enabling any person to carry out any work required or authorised by or under this Part (whether in pursuance of a requirement under section 37(1) or a warrant under section 38(4) or otherwise), and
  - (b) that person resides in the house under a tenancy or an occupancy arrangement, the tenancy or occupancy arrangement, if that person so chooses, is to be taken not to have terminated, varied or altered by reason of that person moving.
- (2) If a person who has so moved resumes lawful occupation, the same terms apply (except so far as otherwise agreed) in respect of that occupation as applied in respect of the previous occupation.

- (3) In this section “lawful occupation” means occupation which is not an offence under section 39.

#### **57 Obstructions etc.**

- (1) This section applies if, after receiving notice of the intended action, any person prevents or obstructs any other person from doing anything which that other person is by or under this Part required, authorised or entitled to do.
- (2) Where this section applies, the sheriff may order the person who prevented or obstructed another person to permit that other person to do all things which the other person reasonably requires to do for the purposes of—
- (a) complying with any requirement imposed by or under this Part, or
  - (b) doing anything which that other person is by or under this Part authorised or entitled to do.
- (3) Any person who fails to comply with such an order is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) This section does not apply in relation to rights conferred by Part 9 (except the right conferred by section 181(4)(a)).

#### **58 Listed buildings etc.**

- (1) This section applies to a building which is—
- (a) included in a list of buildings of special architectural or historic interest, being a list compiled or approved under section 1 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c. 9) (“the 1997 Act”),
  - (b) subject to a building preservation notice under section 3 of the 1997 Act, or
  - (c) one to which section 66 of the 1997 Act (control of demolition in conservation areas) applies.
- (2) The local authority must, before it carries out any work in, or demolishes, any house which is, or which forms part of, a building to which this section applies in pursuance of section 35 or 36, consult—
- (a) the Scottish Ministers,
  - (b) the planning authority (where the planning authority is not the local authority), and
  - (c) such other persons as the local authority thinks fit.
- (3) Any authorisation or requirement under this Part to demolish or carry out work in or in relation to a building to which this section applies has effect only in so far as it is not inconsistent with any provision of the 1997 Act.

#### **59 Recovery of expenses etc.**

- (1) The local authority may recover any—
- (a) expenses it incurs in carrying out any work authorised by section 35,
  - (b) expenses it incurs in pursuance of section 49(1), or
  - (c) payments made under section 50(3),
- from the owner of the house concerned.

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- (2) The local authority may recover any expenses it incurs in carrying out any work authorised by section 36 from the landlord concerned.
- (3) Subsections (1) and (2) entitle the local authority to recover—
  - (a) any administrative expenses incurred by it in connection with the act to which the expenses relate or, as the case may be, with the making of the payment, and
  - (b) interest, at such reasonable rate as it may determine, from the date when a demand for payment is served until the whole amount is paid.
- (4) The local authority may declare any sums recoverable under this section to be payable by instalments.
- (5) Notice of any such declaration must be served on the person from whom the sums are recoverable.
- (6) A local authority is not, despite the generality of subsection (1)(a), entitled to recover any expenses incurred in demolishing a house it has acquired under section 40.

## **60 Certification**

- (1) A person who is required to carry out work by—
  - (a) a work notice, or
  - (b) a repairing standard enforcement order,
 may apply for certification that the work has been completed.
- (2) An application under subsection (1) is to be made—
  - (a) where it is made in consequence of a work notice, to the local authority, or
  - (b) where it is made in consequence of a repairing standard enforcement order, to the private rented housing committee which made the order.
- (3) Where the work was carried out by the local authority under section 35 or 36, an application under this section is not competent unless the applicant has paid any expenses demanded by the local authority under section 59 in relation to that work.
- (4) The local authority or, as the case may be, the committee must grant the certificate applied for if satisfied that the work required by the notice or order has been completed.
- (5) A private rented housing committee may, of their own accord—
  - (a) inspect any house in respect of which they have made a repairing standard enforcement order, and
  - (b) if they are satisfied that the work required by the order has been completed, certify that the work has been completed,
 but the committee may not exercise their power under this subsection unless the period within which the order requires the work to be carried out has ended.

## **61 Registration**

- (1) Each—
  - (a) repairing standard enforcement order,
  - (b) notice of a decision to vary or revoke a repairing standard enforcement order,
  - (c) certificate granted by a private rented housing committee under section 60,
  - (d) maintenance order,

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- (e) maintenance plan approved, devised or varied under this Part, and
  - (f) notice of revocation of a maintenance plan,
- must be registered in the appropriate land register.
- (2) It is for the private rented housing committee which made the repairing standard enforcement order concerned to register documents falling within paragraph (a) to (c) of subsection (1).
  - (3) It is for the local authority to register documents falling within paragraph (d) to (f) of subsection (1).
  - (4) The Keeper of the Registers of Scotland is not required to investigate or determine the accuracy of any information contained in any document falling within paragraphs (a) to (f) of subsection (1) which is submitted for registration.
  - (5) In section 12(3) (exemptions from indemnification by Keeper) of the Land Registration (Scotland) Act 1979 (c. 33), after paragraph (q) insert—
    - “(r) the loss arises in consequence of an inaccuracy in any information contained in any document registered in pursuance of section 61(1) of the Housing (Scotland) Act 2006 (asp 1).”.

## **62 Service of documents**

- (1) The section applies to the following documents—
  - (a) work notices,
  - (b) notices under section 31(3), 32(2) or 34(3),
  - (c) demolition notices,
  - (d) notices under section 35(3),
  - (e) maintenance orders,
  - (f) notices of decisions under section 46(1), and
  - (g) notices of variation or revocation of maintenance plans.
- (2) A document to which this section applies must be served on—
  - (a) the owner and occupier of the house concerned,
  - (b) any creditor holding a standard security over that house,
  - (c) any person who, directly or indirectly, receives rent in respect of that house, and
  - (d) any other person appearing to the local authority to have an interest in that house,

and the document is to be treated as being served or, as the case may be, made on the day on which the document is served on the owner of the house.
- (3) Failure to comply with any of paragraphs (b) to (d) of subsection (2) does not invalidate the document concerned if the local authority, after exercising its powers under section 186(1), is not aware of the existence of the person on whom the document should have been served.

## **63 Date of operation of notices, orders etc.**

- (1) Unless this section provides otherwise, any order, notice, requirement, application, consent or other document served, submitted, given or made, or any other decision

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made, under this Part has effect from the date on which the document or, as the case may be, notice of the document or decision is served.

- (2) Subsection (3) applies where a decision to—
  - (a) make or vary a repairing standard enforcement order,
  - (b) serve a work notice or a demolition notice,
  - (c) make a maintenance order, or
  - (d) approve, devise, vary or revoke a maintenance plan,
 is appealed under section 64.
- (3) Where this subsection applies—
  - (a) the effect of the decision and of the order, notice, plan, variation or revocation made in consequence of it is suspended until the appeal is abandoned or finally determined, and
  - (b) where the appeal is abandoned or finally determined by confirming the decision, the decision and the order, notice, plan, variation or revocation made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.
- (4) A—
  - (a) rent relief order, or
  - (b) revocation of such an order,
 has effect from the date set out in subsection (5).
- (5) That date is the date which is 28 days after—
  - (a) the last date on which the decision to make or, as the case may be, revoke the rent relief order may be appealed under section 64, or
  - (b) where such an appeal is made, the date on which the appeal is abandoned or finally determined (by confirming the decision).
- (6) A repairing standard enforcement order does not cease to have effect where work required by the order would, but for the order, no longer require to be carried out.
- (7) No work may be done or proceedings taken under any order, notice or plan to which subsection (2) or (4) applies, and no requirement to register any such order, notice or plan has effect, until—
  - (a) the last date on which the decision to make it may be appealed, or
  - (b) where such an appeal is made, the date on which the appeal is abandoned or finally determined (by confirming the decision).
- (8) References in this section to the date on which an appeal is finally determined are to be read as references—
  - (a) where the sheriff's determination on the appeal is final, to the date on which the sheriff determines the appeal,
  - (b) where the sheriff's determination may be appealed to the sheriff principal—
    - (i) to the last date on which such an appeal may be made, or
    - (ii) where such an appeal is made, to the date on which the appeal is abandoned or determined by the sheriff principal.
- (9) A reference in this section to the last date on which a decision may be appealed is, where that date is in any case changed under section 64(7), to be read as referring to

the new date only if the change is made before the date on which the right to appeal would otherwise expire.

### *Appeals*

#### **64 Part 1 appeals**

- (1) Any person aggrieved by a decision by a local authority—
  - (a) to serve a work notice,
  - (b) to serve a demolition notice,
  - (c) to carry out work in pursuance of—
    - (i) section 35(1)(b), or
    - (ii) section 36(1)(b),other than, in either case, work for which no notice is required,
  - (d) to demand recovery of any expenses incurred in carrying out work authorised by—
    - (i) section 35, or
    - (ii) section 36,
  - (e) to serve a maintenance order,
  - (f) to approve or devise a maintenance plan or to vary or revoke such a plan, or
  - (g) to refuse to grant a certificate under section 60 in relation to any work required by a work notice,may appeal to the sheriff within 21 days of the date specified in subsection (2).
- (2) That date is—
  - (a) in the case of an appeal under paragraph (a), (b), (d) or (e) of subsection (1), the date on which the work notice, demolition notice, demand for recovery of expenses or, as the case may be, maintenance order is served on the appellant,
  - (b) in the case of an appeal under paragraph (c) or (g) of subsection (1), the date on which notice of proposed work or, as the case may be, of the decision to refuse to grant the certificate is served on the appellant, or
  - (c) in the case of an appeal under paragraph (f) of subsection (1), the date on which notice of the approval, devising, variation or revocation is served on the appellant.
- (3) An appeal under subsection (1) may be made only by a person on whom the relevant work notice, notice of proposed work, demand for recovery of expenses, maintenance order or, as the case may be, notice of the approval, devising, variation or revocation of a maintenance plan is served under this Act.
- (4) A landlord or a tenant aggrieved by a decision by a private rented housing committee—
  - (a) under section 24(1) (decision on a tenant's application),
  - (b) to vary or revoke a repairing standard enforcement order (see section 25),
  - (c) that a landlord has failed to comply with a repairing standard enforcement order (see section 26(1)),
  - (d) to make or not to make a rent relief order (see section 26(2)(b)),
  - (e) to revoke a rent relief order (see section 27(4)), or
  - (f) to grant, or to refuse to grant, a certificate under section 60 in relation to any work required by a repairing standard enforcement order,

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may appeal to the sheriff within 21 days of being notified of that decision.

- (5) A tenant may appeal to the sheriff against a decision by the president of the private rented housing panel under section 23(1) within 21 days of being notified of that decision.
- (6) A tenant aggrieved by a decision by a landlord—
  - (a) to impose any condition on a consent to carry out work in pursuance of section 52(2), or
  - (b) to refuse to consent to the carrying out of any such work,
 may appeal to the sheriff within 6 months of being notified of that decision.
- (7) The sheriff may, on cause shown, hear an appeal after the deadline set by subsection (1), (4), (5) or, as the case may be, (6).

## **65 Part 1 appeals: determination**

- (1) The sheriff, in determining an appeal under 64(1), may—
  - (a) confirm the decision (and any work notice, demolition notice, demand for recovery of expenses or maintenance order served, or maintenance plan approved, devised or varied, in consequence of it),
  - (b) quash the decision (and any such notice, demand, order or plan), or
  - (c) make such other order as the sheriff thinks just.
- (2) The sheriff may determine an appeal under section 64(4) or (5) by—
  - (a) confirming the decision (and any order or variation made, or certificate granted, in consequence of it),
  - (b) remitting the decision (together with the sheriff’s reasons for doing so) to the president or, as the case may be, the committee for reconsideration, or
  - (c) quashing the decision (and any order or variation made, or certificate granted, in consequence of it).
- (3) The sheriff must, unless the sheriff considers the condition or, as the case may be, refusal appealed against to be reasonable, determine an appeal under section 64(6) by quashing the decision and directing the landlord to withdraw the condition (or to vary it in such manner as the sheriff may specify) or, as the case may be, to consent to the application (with or without such conditions as the sheriff may specify).
- (4) In determining whether a condition or refusal appealed against under section 64(6) is reasonable, the sheriff must, where the appeal relates to an application made for the purposes of section 52(2)(a), have regard to any code of practice issued by the Disability Rights Commission which relates to section 52 or 53.
- (5) The sheriff’s determination on an appeal under section 64 is final (subject to subsection (6)).
- (6) The sheriff’s determination on an appeal under paragraph (a), (b), (c)(i), (d)(i) or (g) of section 64(1) may be appealed to the sheriff principal within 21 days of the sheriff’s determination; and the sheriff principal’s decision on any such appeal is final.

## **66 Part 1 appeals: procedure etc.**

- (1) An appeal under section 64 is to be made by summary application.



- (2) No question may be raised on an appeal under section 64(1)(c)(i), (d)(i) or (g) (or on a subsequent appeal to the sheriff principal) which might have been raised on an appeal against the decision to make the work notice or demolition notice to which the appeal relates.
- (3) No question may be raised on an appeal under subsection (1)(c)(ii) or (d)(ii), or subsection (4)(d), (e) or (f), of section 64 which might have been raised on an appeal against the decision under section 24(1) in consequence of which the repairing standard enforcement order to which the appeal relates was made.
- (4) The sheriff may make such order about the expenses of an appeal under section 64 as the sheriff thinks fit (and the sheriff principal may make such an order in relation to any subsequent appeal).

## **67 Adaptations: power to change method of appeal**

- (1) The Scottish Ministers may by regulations—
  - (a) disapply section 64(6), and
  - (b) provide that appeals against landlord’s decisions of the type mentioned in that provision may be made to the private rented housing panel instead of to the sheriff.
- (2) Regulations under subsection (1) may in particular—
  - (a) permit the president of the private rented housing panel to refer an appeal against such a decision to a private rented housing committee for determination,
  - (b) require the panel or, as the case may be, the committee determining such an appeal to have regard to—
    - (i) where the appeal relates to an application made for the purposes of section 52(2)(a), any code of practice issued by the Disability Rights Commission which relates to section 52 or 53, and
    - (ii) such other matters as may be specified in the regulations,
  - (c) provide that the determination of the panel or, as the case may be, the committee on such an appeal may be appealed to the sheriff,
  - (d) make provision about the payment of allowances and expenses in respect of such an appeal,
  - (e) make such further provision about the procedure relating to such an appeal or to an appeal to the sheriff of the type mentioned in paragraph (c) as the Scottish Ministers think fit.

## **CHAPTER 9**

### **INTERPRETATION**

## **68 Sub-standard houses**

- (1) For the purposes of this Part, a house is sub-standard if it—
  - (a) does not meet the tolerable standard,
  - (b) is in a state of serious disrepair, or
  - (c) is in need of repair and, if nothing is done to repair it, is likely to—

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- (i) deteriorate rapidly into a state of serious disrepair, or
- (ii) damage any other premises.

(2) The—

- (a) age,
- (b) character,
- (c) location, and
- (d) internal decorative repair,

of a house are to be ignored when considering whether it is sub-standard.

(3) A house which does not meet the tolerable standard is, for the purposes of this Part, to be treated as not being in a reasonable state of repair.

## **69 Application to non-residential premises**

(1) This Part applies in relation to non-residential premises which form part of any building containing a house as it applies in relation to houses; and references in this Part (except this section) to a house are to be construed as including reference to such non-residential premises.

(2) But nothing in this Part authorises or requires the demolition of, or the carrying out of any work in, any non-residential premises unless the demolition or work is necessary for the purposes of—

- (a) implementing an HRA action plan in relation to any house identified in the plan which forms part of the same building,
- (b) bringing any house which the local authority considers to be sub-standard (whether or not situated in an HRA) which forms part of the same building into, and keeping it in, a reasonable state of repair, or
- (c) securing the maintenance of any house which forms part of the same building.

(3) For the purposes of this section, any part of any premises which do not include a house are “non-residential premises”.

## **70 Interpretation of Part 1**

(1) In this Part—

“development management scheme” has the same meaning as in the Title Conditions (Scotland) Act 2003 (asp 9),

“sanitary defects” includes lack of air space or of ventilation, lack of lighting, dampness, absence of adequate and readily accessible water supply or of sanitary arrangements or of other conveniences, and inadequate paving or drainage of courts, yards or passages,

“Scottish secure tenancy” and “short Scottish secure tenancy” have the same meanings as in the Housing (Scotland) Act 2001 (asp 10),

“sub-standard”, in relation to a house, has the meaning given in section 68,

“tenement management scheme” has the same meaning as in the Tenements (Scotland) Act 2004 (asp 11).

(2) References in this Part to the start of a tenancy are references to the date on which the tenant first occupies the house concerned under the tenancy (or, if earlier, the date from which the tenant is entitled to so occupy the house).