

HOUSING (SCOTLAND) ACT 2006

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 2 – Scheme of Assistance for Housing Purposes

Provision of assistance for housing purposes

96. **Section 71** sets out the purposes for which local authorities may provide assistance for housing purposes. **Subsection (3)** gives examples of the forms of assistance that may be provided. Assistance may be provided on such terms as the local authority thinks fit, subject to the further provisions of Part 2 regarding grants or loans. **Subsection (5)** specifies the sections in this Part that do not apply when assistance is provided for the acquisition or sale of a house. The Scottish Ministers may make regulations about the procedures to be used, and the terms to be imposed, by local authorities in the provision of assistance.
97. **Section 72** requires a local authority to publish a statement of the criteria by which it decides whether to provide assistance and in what form. The statement must also set out any circumstances in which the local authority intends to cap the costs of work for which grant or loan is available, and the rate of interest or other charges on loans.
98. **Section 73** provides that a local authority must provide assistance to the owner of a house in relation to works required by a work notice, or works required to make a house suitable for a disabled person or to reinstate a house that has been so adapted. A local authority must also provide assistance to the owner of non-residential premises which are the subject of a work notice through the operation of **section 69**. Where works are to make the house suitable for a disabled person by the provision of standard amenities the assistance must be in the form of a grant. Standard amenities (toilet, bath or shower, wash-hand basin and sink) are defined in relation to the Tolerable Standard, and the Scottish Ministers can vary the definition by referring to different parts of the Tolerable Standard. Ministers have powers, by means of regulations, to specify what assistance is provided for disabled adaptations, beyond the requirement that assistance for adaptations to give access to standard amenities must be in the form of grant. The powers could be used to prescribe, for example, the type of assistance that should be provided in connection with particular types of adaptation or when defined criteria about the applicant's circumstances are met. In particular they could be used to prescribe circumstances when grant must be provided.
99. **Subsection (5)** specifies that a local authority has carried out its duty under this section if it has invited the person to apply for a grant or loan, but they have not submitted a valid application or have failed to meet mandatory conditions.

Grants and loans

100. **Section 74** states that a person can obtain a grant or loan only if they make an application to the local authority. The application must include full details of the proposed work, including plans and specifications, the location of the work, an estimate of the cost of the work, and other information which may be required, particularly to carry out

any financial assessment. If the applicant does not wish to apply for the full costs of the work, they may state the amount they are applying for. A local authority may require the applicant to provide information supporting the accuracy of the details in the application. The application will not be processed if such additional information is not provided.

101. **Section 75** gives the local authority discretion to approve or refuse an application for a grant or loan. If an application is approved, the local authority must work out the approved expense and, where application is made for a grant or subsidised loan, the applicant's contribution. The local authority may only approve an application for a grant or loan if it considers that the owners of all the land on which the work is to be carried out have given written consent to the application and to being bound by the conditions of grant or loan; the house will provide satisfactory housing accommodation for a reasonable time and meet reasonable standards of physical condition and amenities; and the work will not prevent the improvement of any other house in the same building. The local authority must not approve an application if the work has already begun, unless there were good reasons for starting the work early. A standard loan may only be given if the local authority is satisfied that the applicant would be unable to obtain a sufficient loan on reasonable and affordable terms from a legally authorised commercial lender. The local authority may require that the work is completed within a specified period, which must not be less than 12 months.
102. **Section 76** defines the approved expense in relation to the work referred to in an application for grant or loan. It is the amount that the local authority considers reasonable for the work it considers eligible for assistance, subject to any cap set out in the authority's statement of criteria. If the cost of work rises due to circumstances beyond the applicant's control, the authority may increase the approved expense. The Scottish Ministers may by order specify a maximum amount for the approved expense for a grant or loan. Local authorities may only exceed an amount so specified with the consent of Ministers. Local authorities may not limit the approved expense in the case of a grant to carry out works required to make a house suitable for a disabled person, whose only or main residence it is, or to reinstate a house that has been so adapted.
103. **Section 77** gives the Scottish Ministers power to make regulations for means-testing of grants and subsidised loans. Such regulations would set out a method for assessing an amount to be contributed by the applicant towards the approved expense. The assessment may take into account the financial circumstances of the applicant and their household or dependants, and any other criteria set by Ministers. The regulations may allow a local authority, with Ministers' consent, to reduce the applicant's contribution for different types of case.
104. **Section 78** establishes the procedure a local authority must follow if an applicant requests a review of their assessment.
105. **Section 79** deals with the amount of a grant or loan. The amount of a standard (unsubsidised) loan is the total of the approved expense. The amount of a subsidised loan is also the approved expense, but this is divided into an interest-free element and a repayment element. The amount of a grant, or of the interest-free element of a subsidised loan, is the greater amount of two options. The first is the approved expense minus the applicant's contribution, as calculated under **section 77**. The second, which applies in cases that the Scottish Ministers have specified in regulations, is a specified percentage of the approved expense, or a percentage set by the local authority with the consent of Ministers. A grant or loan calculated in the second way is called a "minimum percentage" grant or loan.
106. **Section 80** allows a local authority to set the terms for a standard loan or the repayment element of a subsidised loan, including provisions on interest (or other charges) and repayment. The local authority may not require repayment of the interest free element until the applicant to whom the loan is made disposes of an interest in the house by sale or otherwise, except by the grant of a standard security or a servitude or by means of

a lease. An example could be on sale of the house. The local authority may require the loan and interest to be secured by a standard security over the house.

107. **Section 81** deals with notification of a local authority's decision on grant or loan applications. If the authority approves the application, it must inform the applicant of the approved expense, the applicant's contribution, the amount of the grant or loan (stating that this is a minimum percentage grant or loan, where appropriate), and the terms of the offer of loan (including interest and repayment terms) or grant. If the owner is a different person, the authority must inform the owner of the amount and terms of the loan or grant. Where a loan is offered, the notice must advise the applicant to obtain independent advice on its terms from a suitably qualified person. If the local authority refuses an application or sets the approved expense at an amount less than was applied for, it must provide the applicant with written notice of its reasons.
108. **Section 82** requires the local authority to pay a grant or loan either within one month of the date on which the local authority considers that the house is fit for occupation on completion of the relevant work, or by instalments while the work is being done, with a final instalment within one month of completion. Payment is subject to the local authority being satisfied with the standard of the work completed. No money may be paid on a secured loan before the standard security has been registered. If a grant is paid in instalments, the amount paid at any time must be in proportion with the grant percentage, for example, if the amount of grant is 75% of the approved expense, the total amount paid at any time must be no more than 75% of the cost of works completed up to that time. Where an instalment of grant or loan is paid before completion, and the work is not completed within 12 months of the date of that payment, the local authority may require repayment of the instalment and any subsequent instalments, along with interest from each date of payment. The local authority may set the rate of interest.

Grants and loans: conditions

109. **Section 83** sets conditions which must be complied with in respect of land or premises where work has been done with grant or loan assistance. The conditions apply from the date on which the local authority considers that the house is fit for occupation on completion of the relevant work. In the case of a grant, they end 10 years after that date. In the case of a subsidised loan, they end either 10 years after that date or when the repayment element of the loan and any interest or charge on it is fully repaid, whichever is later. In the case of a standard loan, the conditions cease to apply when the loan and any interest are fully repaid. The first three conditions are: a house to which the conditions apply must be used as a private dwelling (although part of it can be used for business); if it is occupied by the owner or a member of their family it must be their only or main residence; and the property must be kept in good repair. Only this last condition applies to non-residential premises which have received grant. In addition the owner must, if required to do so, certify to the local authority that the relevant conditions are being met.
110. When a grant or loan is paid, the local authority must record a notice, in terms of **section 84**, in the appropriate land register, either the General Register of Sasines or the Land Register of Scotland. The notice must specify the conditions set out in **section 83**, the period for which they apply, and the provisions in **section 86** requiring the owner to repay the relevant amount if the conditions are not met. The costs of recording the notice are to be paid by the applicant to whom the grant or loan is paid.
111. **Section 85** allows the owner (or a creditor in a standard security with a right to sell) to discharge the conditions on a house resulting from a loan or grant by paying the local authority the sum that would be due if the conditions were breached. The conditions are also discharged when a local authority demands payment following a breach of any of them. In either of these cases, the local authority must register a further notice to specify that the conditions no longer apply. The owner of the house must pay the local authority the expenses of registering the notice. If a creditor in a standard security makes

a payment to discharge the conditions, the sum concerned forms part of the amount secured by the standard security.

112. **Section 86** requires that, if any of the conditions in **section 83** are breached, the local authority must demand repayment from the owner of the house. However, if the authority believes that the breach can be remedied, it may allow time for this to be done. If the breach is remedied within the period set, the local authority may disregard it. If the authority considers that the breach cannot be remedied, but the owner was not responsible for it, it may disregard the breach. Either of these actions requires the consent of Ministers, who may approve conditions to apply to the suspension or disregard. The authority also has power to apply to the sheriff for an interdict to correct or forestall a breach of the conditions.
113. **Section 87** establishes how the sum to be paid to a local authority if conditions are breached is calculated. Where a grant was given, the amount is the whole grant plus interest on it. A standard loan has to be repaid in full, with the unpaid interest up to the date of repayment. Where a subsidised loan was given, the whole loan has to be repaid, plus unpaid interest on the repayment element up to the date of repayment, plus interest on the interest-free element up to that date.

Miscellaneous and supplementary

114. **Section 88** prevents a local authority from giving a further grant or subsidised loan for the same work for which a grant or subsidised loan has already been approved. It may give a standard loan for the same work, but the amount cannot exceed the approved expense minus the amount of the grant, i.e. the amount the applicant is required to pay. A local authority must not give a further grant or subsidised loan within 10 years of approving one for work on the same house, unless at least one of four conditions apply. These are that the additional work could not have been foreseen when the original application was approved; that the additional work could not have been carried out at the same time as the original work; that the additional work was not considered to be eligible for a grant or subsidised loan when the local authority approved the original application; or that the authority has invited an application for a further grant or loan under **section 90**.
115. **Section 89** makes it a criminal offence to give false information in an application for a grant or loan or in response to an authority's request for information to support the accuracy of an application. It is also an offence to fail to notify the authority of a change in circumstances affecting an application.
116. **Section 90** allows a local authority to invite an application for a further grant or subsidised loan, where an application for grant or loan has been made and the house requires the replacement of unsafe electrical wiring, installation of mains-powered smoke detectors or provision of adequate thermal insulation. For premises where any part is owned in common (for example, a tenement), this section also applies to the installation of a fire-resistant front door for each separate house or part of the premises, or a main door entry-phone system.
117. **Section 91** allows a local authority to make payments to a not for profit lender that provides loans to individuals for the purposes of work or the acquisition or sale of a house that is eligible for local authority assistance. This could allow the authority to contribute to the loan fund or subsidise administrative costs of a non-profit lender working across authority areas, as an alternative to making standard loans itself. The terms on which the local authority makes payments to the lender may include restrictions on the terms of loans made to individuals. Ministers may make regulations to change the definition of relevant lenders, or to control the terms of payments to them and to individuals.

Special cases

118. **Section 92** provides that there are only three situations in which a tenant is eligible for a grant or loan. The first is if the relevant work has been the responsibility of the tenant under the lease for at least two years. The second is if the work is to make the house suitable for a disabled person or to reinstate a house that has been so adapted. The third is when the work is urgently required to protect the health and safety of the occupants of the house, including repair work and the provision of fire safety measures.
119. **Section 93** modifies this Part of the Act in relation to agricultural tenants and crofters, whose tenancies include provision for compensation to be paid at the end of the tenancy for any improvements carried out by the tenant. Such a tenant is to be treated as the owner of the house for the purposes of this Part. Where compensation becomes due, under the Crofters (Scotland) Act 1993 or the Small Landholders (Scotland) Acts 1886 to 1931, during the period when conditions apply to the house resulting from a grant or loan, a deduction is made from the compensation to take account of the contribution made by the grant or loan. Provision for similar deductions from compensation was inserted in the Agricultural Holdings (Scotland) Act 1991 by the Agricultural Holdings (Scotland) Act 2003.

Supplementary

120. **Section 94** allows Ministers to give local authorities generally, or a particular authority, directions on the giving of assistance. Such directions may not relate to the provision of assistance to a particular person or in relation to particular premises. Local authorities must have regard to guidance issued by Ministers on their functions under this Part.
121. **Section 95** gives local authorities powers to improve the amenity of residential areas, for example by improving paths and waste ground. A local authority may carry out work on its own land, assist work on land not owned by it, carry out work on land with the agreement of its owner, and acquire land by agreement. There is also a power of compulsory purchase, which requires authorisation by Ministers. Assistance for such works may be on such terms and conditions as the local authority thinks fit, and is not constrained by the provisions on grants and loans for work to houses.
122. **Section 96** extends to the Scottish Ministers the powers and functions given to local authorities in relation to grants and loans in this Part.
123. **Section 97** provides the interpretation of terms used in this Part.