

## **EXECUTIVE NOTE**

### **THE PRIVATE RENTED HOUSING PANEL (APPLICATIONS AND DETERMINATIONS) (SCOTLAND) REGULATIONS 2007 SSI/2007/173**

1. The above Regulations were made in exercise of the powers conferred by paragraph 8 of Schedule 2 to the Housing (Scotland) Act 2006 (“the Act”). The Regulations are subject to negative resolution procedure.

#### **Policy Objectives**

2. The purpose of these Regulations is to make further provision for the procedure that must be followed when making an application to the Private Rented Housing Panel (“the Panel”) under section 22(1) of the Act and for the determination of such applications by the Panel and a Private Rented Housing Committee (“a Committee”). These rules are additional to the procedures laid down in the Act for the making and determination of applications.

3. The Regulations set out what a tenant with a relevant tenancy must do to apply to the Panel to enforce the Repairing Standard; how the Panel must deal with an application upon receipt of it; the procedure for the processing and determination of an application by a Committee; procedure for the payment of expenses; and provisions for dealing with a situation where a party to an action dies or becomes subject to a legal incapacity.

4. The Panel will be based on the existing Rent Assessment Panel. It will continue to carry out the existing functions of that body as well as enforcing the Repairing Standard.

5. Chapter 4 of Part 1 of the Act, along with Schedule 2, sets out the Repairing Standard that a house let under a relevant tenancy (mainly in the private rented sector, which expression is used here to mean the relevant types of tenancy) must meet at the start of, and at all times during, the tenancy. It is the landlord’s duty to ensure that the house meets this standard. If the tenant believes that the landlord has failed in this duty, despite having been notified by the tenant of work needing to be done, then the tenant may apply to the Panel. The President of the Panel may reject an application or refer it to a Committee for determination. The Act sets out the basic procedures for making an application to the Panel, referral to a Committee, determination by a Committee and recording and notification of decisions, as well as providing for the means of enforcement by a Committee

6. The Act’s provisions both extend the statutory repairing obligations of a landlord and allow a tenant a cheaper, quicker, more accessible and less formal method of enforcing them. At the moment a tenant would have to have recourse to the sheriff court to enforce the repairing obligations under Schedule 10 to the Housing (Scotland) Act 1987. The intention is to bring about improved standards of repair and maintenance in the private rented sector.

7. The Regulations begin by setting out how to make an application, including the information that must be provided, and explain the procedures if a party to a case is represented. The Regulations then set out the procedure to be followed by the Panel when processing the application, including entering details of it in a register of cases. The Panel Secretary must point out to the parties that mediation is available as an alternative means of resolving the dispute, explaining the use of the procedure and facilitating it if both parties agree to use it.

8. The Regulations then provide details of how a Committee will deal with an application, including a power to give directions relating to an application. A Committee may assist an unrepresented party, without advising on the direction to take. The Regulations provide that an inspection of the property may be made at a point decided by the Committee, which may also carry out further inspections. At least 14 working days written notice of a hearing must be given to the tenant and landlord. A hearing will take place in public, unless the Committee decides that, in order to ensure a fair hearing, it should be private. A Committee may exclude from a hearing any person causing disruption. There are rules on adjournments and amendments to representations, the giving of decisions and the method for claiming expenses. Finally, the Regulations provide for representation of a party to a case who has died or become subject to a legal incapacity.

### **Consultation**

9. A full public consultation on the legislative proposals that became the Housing (Scotland) Act 2006 was carried out between July and October 2004. These included the proposals relating to the Repairing Standard and the Private Rented Housing Panel, which had been recommended by the Housing Improvement Task Force. Responses were received from 314 individuals and organisations. The majority of respondents agreed with the content of the new Repairing Standard and the proposal to establish the Private Rented Housing Panel was widely welcomed, by private landlord organisations among others.

10. The Regulations have been developed in co-operation with the Rent Assessment Panel. The Scottish Committee of the Council on Tribunals has been consulted in line with statutory requirements and its comments have been acted upon as far as possible.

11. The following bodies have been consulted on a draft of the Regulations: the Chartered Institute of Housing, Citizens Advice Scotland, the Scottish Association of Landlords, the Scottish Consumer Council, and Shelter Scotland. Their comments (which included general support for our proposals) have been taken into account.

### **Financial Effects**

12. These Regulations have no financial effects on the Scottish Executive, local authorities or business. A Regulatory Impact Assessment has been prepared and will be available at [www.scotland.gov.uk/Topics/Business-Industry/support/15242/1462](http://www.scotland.gov.uk/Topics/Business-Industry/support/15242/1462).

Scottish Executive Development Department  
6 March 2007

## **HOUSING (SCOTLAND) ACT 2006**

### **THE PRIVATE RENTED HOUSING PANEL (APPLICATIONS AND DETERMINATIONS) (SCOTLAND) REGULATIONS 2007**

#### **REGULATORY IMPACT ASSESSMENT**

##### **Title of proposal**

This Regulatory Impact Assessment (RIA) relates to the Private Rented Housing Panel (Applications and Determinations) Regulations 2007. An RIA was carried out in 2005 on the Housing (Scotland) Bill, which became the Housing (Scotland) Act 2006. The policy intention of the work of the Private Rented Housing Panel was addressed in the Bill RIA. The present RIA relates specifically to the impact of the procedural rules set out in the Regulations, but some contextual information relating to that Act's provisions on the Panel is also provided.

##### **Purpose and intended effect**

###### *Objectives*

Many of the provisions of the Housing (Scotland) Act 2006 are designed to improve the physical condition of private sector housing. In order to improve conditions in the private rented sector, the Act establishes a new repairing standard, which applies to most tenancies of houses apart from the Scottish secure tenancy or the short Scottish secure tenancy. A landlord will have a duty to ensure that the house meets the repairing standard. If a tenant believes that a landlord has failed to comply with the duty, he or she will be able to appeal to the Private Rented Housing Panel to enforce the repairing standard. This Panel will be based on the existing Rent Assessment Panel (RAP). It will continue to carry out the existing functions of RAP as well as enforcing the repairing standard.

The Act sets out requirements relating to applications to the Panel, referral by the President of the Panel to a Private Rented Housing Committee, determination of an application by a Committee, and procedures to be followed by a Committee. Paragraph 8 of Schedule 2 to the Act gives the Scottish Ministers power to make by regulations further provision about the making or determination of applications to the Panel. The present Regulations make such provision for the better working of the Panel and Committees.

###### *Background*

At present a private tenant seeking to enforce the existing repairing obligations would have to take action in the Sheriff Court against the landlord. The new Panel and Committees will provide a more accessible and less formal means of enforcement for the new repairing standard.

An extensive consultation on legislative proposals, including the establishment of the Panel and Committees, to be based on the existing Rent Assessment Panel and Committees, took place in 2004. These proposals had earlier been consulted upon when they were made by the Housing Improvement Task Force in 2003. They received wide support from stakeholders. The Housing (Scotland) Act 2006 received Royal Assent in January 2006.

### ***Rationale for government intervention***

Without the Private Rented Housing Panel and Committees there would be no method of enforcing the new repairing standard. Without the present Regulations the Panel and Committees might be able to function on the basis of the statutory procedures contained in the Act, with additional non-statutory arrangements, but this would be likely to lead to inconsistency and a lack of legal certainty in the processes. These Regulations are therefore required to ensure the proper functioning of the Panel and Committees.

### **Consultation**

A full-scale public consultation on the legislative proposals that became the Housing (Scotland) Act 2006 was carried out between July and October 2004. These included the proposals relating to the repairing standard and the Private Rented Housing Panel, which had been recommended by the Housing Improvement Task Force. Responses were received from 314 individuals and organisations. The majority of respondents agreed with the content of the new repairing standard and the proposal to establish the Private Rented Housing Panel was widely welcomed, by private landlord organisations among others.

The Regulations have been developed in co-operation with the Rent Assessment Panel and the Scottish Committee of the Council on Tribunals has commented on them.

The Regulations and RIA were sent to the leading stakeholders: the Chartered Institute of Housing, Citizens Advice Scotland, the Scottish Association of Landlords, the Scottish Consumer Council, and Shelter Scotland. Their comments (which included general support for our proposals) have been taken into account in finalising both.

### **Options**

#### ***Option 1: Do nothing***

This option would mean not using the power in paragraph 8 of Schedule 2 to the Housing (Scotland) Act 2006 to make further provision about the making or determination of applications to the Private Rented Housing Panel. This would not necessarily prevent the Panel from operating, but it would not be able to function in a satisfactory manner.

#### ***Option 2: Use the regulation-making power to make further provision about the making or determination of applications to the Private Rented Housing Panel***

Providing additional rules on procedures for applying to the Panel and for determination of applications will provide clarity, consistency and legal certainty in the operation of the Panel and Committees.

## **Costs and benefits**

### ***Sectors and groups affected***

The categories of people involved will be tenants and landlords in the private rented sector, with some others, such as people occupying living accommodation under their terms of employment and their employers. Local authorities will also have a role in connection with the Private Rented Housing Panel, since they will have power to do work that a landlord will not or cannot do following the service of a repairing standard enforcement order and to recover the costs. They will also be involved in publicising the new system. However, the Regulations dealt with in this RIA have no direct effect on local authorities.

### ***Benefits***

The Regulatory Impact Assessment for the Housing (Scotland) Bill (2005) explained that tenants in the private rented sector are reliant upon their landlords to arrange for necessary repairs to be carried out. If repairs are requested but not carried out, the tenant is living in sub-optimal housing with no compensating reduction in rent. The Private Rented Housing Panel will provide a means of enforcing the repairing standard, which will be more accessible, cheaper and quicker for an individual tenant than taking action in the sheriff court.

The specific benefit of having statutory procedural rules is that the Panel and Committees will be able to operate in a more satisfactory manner.

### ***Costs***

The Scottish Executive will meet the costs of the Panel and Committees, including accommodation costs, staff salaries, members' expenses and the costs of holding hearings, such as fees, expenses, obtaining reports and the hire of premises.

The costs of complying with the repairing standard should not be seen as additional costs, since landlords should already be meeting the relevant requirements. Most of the requirements are existing legal requirements, so a landlord not meeting them is already breaking the law. Others are contractual requirements, which landlords should be meeting under contracts of lease.

The costs of landlords attending a hearing are likely to be small. Landlords, tenants and their representatives will be able to claim reasonable travelling expenses. In cases where the complaint is upheld, the additional cost to the landlord simply reflects the cost of compliance with legal obligations.

No additional costs arise specifically from the present Regulations as compared with the option of non-statutory rules.

### **Small/Micro Firms Impact Test**

As mentioned above, no additional costs on landlords will result from these Regulations.

## **Legal Aid Impact Test**

It is expected that those tenants who seek to enforce the current repairing obligations in the sheriff court will instead apply to the Private Rented Housing Panel, thus leading to potential savings in legal aid. The Regulations will assist in this, by allowing the Panel and Committees to operate effectively.

## **Test run of business forms**

The Panel and Committees will not use statutory forms.

## **Competition assessment**

Enforcement of the repairing standard will ensure that less conscientious landlords do not gain a competitive advantage by failing to meet their obligations to carry out repairs. The Regulations will assist in this, insofar as they help the Panel and Committees to function effectively.

## **Enforcement, sanctions and monitoring**

The Regulations have been considered by the Scottish Committee of the Council on Tribunals. The President of the Private Rented Housing Panel will monitor the operation of the procedural rules set out in the Regulations. A party to a case who is unhappy with the way the case has been handled by Panel staff or Committee members (including the procedural matters covered in the Regulations but excluding the decision on the case) may complain to the Panel Secretary. If still not satisfied, they may ask for the matter to be referred to the Panel President. If they are not satisfied with the President's response, they may complain to the Scottish Public Services Ombudsman.

## **Implementation and delivery plan**

The rules set out in the Regulations will be implemented as soon as the Panel begins to function. The intended date of implementation is 3 September 2007.

## **Post-implementation review**

The President of the Private Rented Housing Panel will review implementation of the Regulations and the relevant sections of the 2006 Act and advise the Executive of any need for change. The Executive will review the impact of the Regulations within ten years of their coming into force.

## **Summary and recommendation**

Based on the analysis outlined above and comments from stakeholders, the Executive recommends the adoption of option 2. The Regulations have been drafted on this basis.

a.	<b>DECLARATION</b>
b.	
c.	<b>I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.</b>
d.	
e.	<b>Signed by the accountable Minister:</b>
f.	_____
g.	<b>DES McNULTY</b>
h.	<b>Deputy Minister For</b>
	<b>Communities</b>
i.	
j.	<b>Date:</b> _____

**Contact**

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