

POLICY NOTE

THE HOUSING (SCOTLAND) ACT 2014 (COMMENCEMENT NO. 3 AND TRANSITIONAL PROVISION) ORDER 2015

SSI 2015/272 (C. 36)

1. The above instrument was made in exercise of the powers conferred by section 104(3) and (5) of the Housing (Scotland) Act 2014 (“the 2014 Act”). It is laid under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Policy Objectives

2. The instrument forms the third part of an implementation package for the 2014 Act. The provisions in the Act will be commenced in several stages. The instrument commences four distinct sets of provisions:

- Provisions in sections 22 and 23 to introduce safety elements in the repairing standard for private landlords,
- Provisions in sections 25, 26 and 27 to provide third party reporting applications, procedure and appeals in respect of the repairing standard,
- Provisions in section 89 of the 2014 Act (maintenance plans and orders), and
- Provisions in section 97 of the 2014 Act (Scottish Housing Regulator: transfer of assets following inquiries).

Repairing Standard

3. Sections 22 and 23 of the 2014 Act introduce amendments to the repairing standard in chapter 4 of Part 1 of the Housing (Scotland) Act 2006 (“the 2006 Act”). These amendments will require private landlords to install carbon monoxide alarms and carry out regular electrical safety inspections. In meeting these duties, private landlords must have regard to building regulations and guidance published by the Scottish Government

4. Section 23(1) was brought into force on 20 November 2014 by the Housing (Scotland) Act 2014 (Commencement No. 1, Transitional and Saving Provisions) Order 2014 (SSI 2014/264). Section 23(1) allows the Scottish Government to issue guidance for private landlords which those landlords must have regard to in meeting the duty introduced by section 23(2). The guidance was published on the website of the Private Rented Housing Panel on 19 February 2015 (<http://www.prhpscotland.gov.uk/prhp/137.26.33.html>).

5. This instrument also brings into force:

Provision	Effect
Section 22	Amends section 13 of the 2006 to require private rented housing to have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health

Provision	Effect
Section 23(2)	Inserts new sections 19A and 19B in the 2006 Act which set out a duty to carry out electrical safety inspections at intervals of not less than 5 years in private rented property

6. This Order makes 1 December 2015 the date that these provisions will come into force.

Third Party Reporting

7. Section 25, 26 and 27 of the 2014 Act introduce amendments to the 2006 Act to expand access to the Private Rented Housing Panel for the purposes of enforcing the repairing standard. Section 25 amends sections 22, 23 and 24 of the 2006 Act by introducing provisions that enable a third party applicant (a local authority) to make an application to the Private Rented Housing Panel for a determination of whether a landlord has failed to comply with the duty imposed by section 14(1)(b) of that Act.

8. Section 25 also amends section 181 of the 2006 to provide a right of entry for any person authorised by a third party applicant to a house in respect of which they may wish to make an application to the Panel to enforce the repairing standard. Section 181 is also amended to enable the right of entry for a member of the private rented housing committee to a house in respect of which a third party application has been made. Section 182 is amended so that a sheriff or justice of the peace may by warrant authorise a third party applicant to exercise the right of entry conferred on them.

9. Section 26 (1) to (6) of the 2014 Act amends Schedule 2 of the 2006 Act, so that the procedures to be adopted by a private rented housing committee in determining an application to the private rented housing panel in relation to a landlord's failure to comply with the repairing standard (in terms of section 14(1)(b) of the 2006 Act), take account of applications made by a third party applicant.

10. Section 26(7) of the 2014 Act was brought into force on 20 November 2014 by the Housing (Scotland) Act 2014 (Commencement No. 1, Transitional and Saving Provisions) Order 2014 (SSI 2014/264). Section 26(7) allows the Scottish Ministers to bring forward regulations to make further provision about the making or determination of applications from a local authority.

11. Section 27 (1) amends sections 64 to 66 of the 2006 Act to make provision allowing a third party applicant to appeal a decision by a private rented housing committee to the sheriff, the sheriff to determine the appeal and to set out who is entitled to be a party to any appeal in respect of a third party application.

Maintenance Plans and Orders

12. The policy intention is that people should live in good quality homes. Part 6 of the 2014 Act amends the powers of local authorities in Part 1 of the 2006 Act to require owners to repair and maintain their houses. Sections 85(3) and (4) and 86 (in part) were brought into force by the Housing (Scotland) Act 2014 (Commencement No. 1, Transitional and Saving Provisions) Order 2014 (SSI 2014/264). The remaining provisions in Part 6, with the exception of section 89, were brought into force on 1 April 2015 by the Housing (Scotland) Act 2014 (Commencement No. 2) Order 2015 (SSI 2014/122).

13. The Government's intention was to commence section 89 from 1 April 2015 but it was accidentally omitted from the previous order. This point was raised by the legal advisers to the Delegated Powers and Law Reform Committee and the Scottish Government advised that it would be included in the next Commencement Order to be made under the 2014 Act.

14. This instrument, being the next such Order, brings into force the following provisions in section 89 of the 2014 Act:

Provision	Effect
Section 89(1) and (3)	Registration of documents relating to maintenance plans under the 2006 Act moved from the land register to the building standards register
Section 89(2)	Allow local authorities to revoke a maintenance order under the 2006 Act where a property factor has been appointed

15. This Order makes 13 July 2015 the date that this section will come into force and accordingly the date that the amendments made by that section to the 2006 Act will be made.

Scottish Housing Regulator: transfer of assets following inquiries

16. Section 97 makes amendments to section 67 of the Housing (Scotland) Act 2010 which will, in limited circumstances where a registered social landlord (RSL) is at risk of insolvency, enable the Scottish Housing Regulator to direct the RSL to transfer its assets to another RSL without the ballot of tenants that otherwise would have been required before such a transfer can be made. It was partly brought into force by the Housing (Scotland) Act 2014 (Commencement No. 1, Transitional and Saving Provisions) Order 2014 (SSI 2014/264). This was for the purpose of enabling the Regulator to comply with the duty placed on it – at section (4B)(b) of the Housing (Scotland) Act 2010 (asp 17), as inserted by section 97 – to consult stakeholders about the guidance it proposed to issue on the circumstances in which it considered that it might exercise the powers under section 97, the action it expected to take in these circumstances, and how it would communicate with affected stakeholders in these circumstances. The Regulator has concluded the consultation and expects to issue its guidance in August 2015. This order makes 31 August 2015 the date on which the section comes into force for all other purposes.

Transitional Provision: Electrical Safety Inspections in Private Rented Homes

17. The duty to carry out electrical safety inspections in private rented property will come into force on 1 December 2015.

18. The transitional provision in article 3 modifies that duty in respect of a tenancy which exists on 1 December 2015. In this case a landlord will have until 1 December 2016 to carry out an inspection if the tenancy continues until then. Article 3 and the Scottish Government guidance mean that an Electrical Installation Condition Report (EICR) completed in accordance with Amendment 1 to BS 7671:2008 (IEE Wiring Regulations 17th Edition), which came into effect on 1 January 2012, will constitute an electrical safety inspection for the purpose of the 2006 Act as amended by the 2014 Act, except that any EICR carried out after 1 December 2015 must be supplemented by a Portable Appliance Test (PAT) record.

Commencement

19. The Schedule to the Order details the sections to be commenced and the date they are to be commenced

20. The Order comes into force on 13 July 2015 with **section 89** of the 2014 Act coming into force on the same day. The Order also appoints 31 August 2015 for **section 97** to come into force and 1 December 2015 for **sections 22, 23, 25, 26 and 27** to come into force.

Consultation

21. During 2012, the Scottish Government carried out a series of policy consultations which informed the drafting of the Housing Bill.

22. Full details of the consultations on the Housing Bill are available on the Scottish Government website at:

<http://www.scotland.gov.uk/Topics/Built-Environment/Housing/reform/housing-bill/stakeholderengagement>.

23. The consultation did not cover the amendments to the repairing standard because these were non-government amendments introduced at stage 2. The issue of electrical safety was debated in Parliamentary Debate (S4M-05955: Electrical safety in the private rented sector) on 21 May 2013, and an open letter was published in the Scotsman newspaper on 14 October 2013 which was in favour of mandatory five year electrical safety check which was signed by a wide range of stakeholders. Stakeholder evidence placed before the Infrastructure and Capital Investment Committee of the Scottish Parliament supported mandatory regular electrical safety checks and also carbon monoxide detectors in the private rented sector. The Committee recommended that both these measures should be included in the Act in paragraph 168 of their Stage 1 Report on 3 April 2014.

Impact Assessments

24. A full Equality Impact Assessment was carried out on the Bill as introduced on 21 November 2013. The impact assessment along with those produced for the individual policy areas that are in the 2014 Act can be found at:

<http://www.scotland.gov.uk/Topics/Built-Environment/Housing/reform/housing-bill/impact>

Financial Effects

25. A full Business and Regulation impact assessment was carried out on the Bill as introduced on 21 November 2013. The impact assessment, along with those produced for the individual policy areas that are in the 2014 Act can be found at:

<http://www.scotland.gov.uk/Topics/Built-Environment/Housing/reform/housing-bill/impact>

Scottish Government
Housing, Regeneration & Welfare Directorate
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