

HOUSING (SCOTLAND) ACT 2006

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 1 – Housing Standards

Chapter 4 – The repairing standard

Landlord’s duty to repair and maintain

39. **Section 12** sets out the tenancies to which the repairing standard applies. It will apply to all tenancies, except Scottish secure tenancies and short Scottish secure tenancies, houses purchased by a local authority to be repaired and used as housing accommodation as an alternative to demolition, houses occupied by tenants of tenancies under the Agricultural Holdings (Scotland) Acts, tenancies of houses on crofts and tenancies of houses on holdings to which the Small Landholders (Scotland) Acts 1886 to 1931 apply. In terms of the interpretation section (**section 194**) the standard does not apply to occupancy arrangements as they are not tenancies, but it does apply where living accommodation is occupied by a person under that person’s terms of employment.
40. **Section 13** outlines the definition of the repairing standard. **Subsection (1)** sets out the criteria to be met if a house is to meet the repairing standard. **Subsection (2)** requires that, in determining whether a house is fit for human habitation, regard should be had to whether, and to what extent, the house fails to meet building regulations in force in the area. **Subsection (3)** states that the standard of repair of the structure and exterior of the house should have regard to the age, character and prospective life of the house and the nature of the locality. **Subsection (4)** means that gas, water and electricity supplies which are the landlord’s responsibility but are outside the house are also covered. **Subsection (5)** states that the requirement in **subsection (1)(f)** to have satisfactory provision in relation to fire detection and warning is to be determined with regard being paid to relevant building regulations and guidance issued by Ministers.
41. Landlords’ duties to repair and maintain a property are set out in **section 14**. Landlords have a duty to ensure that the house meets the repairing standard. They must ensure that work is carried out at the start of the tenancy so that the house meets the standard, and at all times during the tenancy, but this latter duty only applies where the landlord is notified by the tenant of a problem or the landlord otherwise becomes aware that work is required. This work should be carried out within a reasonable time and must include making good any damage caused in carrying out the work.
42. **Section 15** details how the repairing standard applies to flats or other situations where the house forms part only of the premises. **Subsection (1)** makes clear that the reference in the repairing standard to the structure and exterior of the house includes any part of the building in which the landlord has an interest. This has the effect of including common property in the assessment of the repairing standard in relation to the structure and exterior. In terms of **subsection (2)**, the landlord is only obliged to carry out work that will have an effect on the parts of the premises that the tenant is entitled to use.

43. **Section 16** excludes from the landlord's duty under the repairing standard any work where the tenant has the responsibility for the work and the house is let for a period of not less than three years. In addition, where the need for work under the duty arose from the tenant's action, the duty would not apply. The duty under the repairing standard does not include rebuilding or reinstating a house that is damaged or destroyed or work on anything that the tenant is entitled to remove from the house. The section also provides that the landlord has not failed to comply with the obligation where he has tried to carry out the required work, but cannot obtain rights to do so.
44. **Section 17** prevents contracting out from the landlord's obligation under **section 14(1)** through the terms of a tenancy or other agreement between a landlord and tenant, unless consent has been obtained from the sheriff under **section 18**.
45. **Section 18** provides that the landlord's duty to repair and maintain the property may be varied or excluded by order of the sheriff, on application from landlord or tenant. This can be done only if the sheriff considers it reasonable and both parties consent.
46. A landlord must inspect a house before a tenancy starts to identify any work required to meet the repairing standard. The landlord must tell the tenant of any work needed to meet the standard (**section 19**). Landlords must give tenants, on or before the tenancy starts, written information on the repairing standard and the landlord's duties under the standard. The Scottish Ministers can issue guidance on the information to be provided to tenants, to which landlords must have regard (**section 20**).

Enforcement of repairing standard

47. **Section 21** sets out the basis for the Private Rented Housing Panel and Private Rented Housing Committees, which will be formed by renaming the existing Rent Assessment Panel and Rent Assessment Committees constituted under Schedule 4 to the Rent (Scotland) Act 1984. As well as carrying out the duties set out in this Chapter and **schedule 2** to the Act in relation to enforcement of the repairing standard obligations, they will also carry out all of the existing work of the Rent Assessment Panel and Rent Assessment Committees. The president of the Panel must monitor how the Committees exercise their functions in relation to the repairing standard and can give guidance and (except in relation to particular cases) directions.
48. **Section 22** outlines the right of a tenant, who believes that his or her landlord has not complied with the repairing standard duty, to apply to the Panel to seek a determination as to whether the landlord has complied with their duties under the repairing standard. An application can only be made to the Panel if the tenant has informed the landlord of the need for work to be done. An application to the Panel cannot be made if the landlord is a local authority, a registered social landlord, Scottish Water or Scottish Homes.
49. **Schedule 2** sets out the procedure to be adopted by a Private Rented Housing Committee in determining an application. Under **paragraphs 1 and 2** the landlord and tenant must be notified and given the opportunity to make written or oral representations. The Committee may also make other inquiries, including inquiries about matters not included in the application. Under **paragraph 3**, the Committee may cite any person to give evidence or information. It is an offence to refuse to give such information, to make a false or misleading statement in respect of information required, or to conceal or destroy any documents requested. Where the application alleges that the landlord is failing to provide suitable fire detection and warning measures, the Committee must consult the fire and rescue authority. Once the Committee reaches its decision, which can be by a majority, it must record it in a full report which must be sent to the landlord, tenant, any person acting for the tenant in relation to the application (where the Committee is aware of his or her name and address) and local authority (**paragraph 6**). **Paragraph 7** provides that, even if the tenant withdraws the application, the Committee may continue to consider the case and make a repairing standard enforcement order if appropriate.

50. **Section 23** makes provision about the process whereby the president of the Private Rented Housing Panel decides whether to refer an application to a Private Rented Housing Committee or reject it. **Section 24** requires the Committee to which an application is referred to decide whether the landlord has complied with his repairing obligations. If it decides that the landlord has failed to comply, it must issue a repairing standard enforcement order, requiring the landlord to carry out work to meet the repairing standard, within a specified period of at least 21 days. The order may state specific things that the landlord must do to meet the standard. If it decides that the landlord is unable to comply because he is unable to obtain rights of access, it must notify the local authority.
51. **Section 25** allows a Private Rented Housing Committee to vary or revoke a repairing standard enforcement order. This includes extending the period within which work must be completed, when the Committee is satisfied that the work was not or will not be completed within the original period set and either considers that satisfactory progress has been made or that a written undertaking from the landlord that work will be completed by another date is satisfactory.
52. **Section 26** sets out the procedure if a landlord fails to comply with a repairing standard enforcement order. The Committee must notify the local authority of the failure and may serve a rent relief order. The landlord is not to be treated as having failed the standard if the Committee is satisfied that he or she has tried but is unable to obtain rights, such as rights of access, that are necessary for him or her to carry out the work, or that the work is dangerous. **Section 27** provides that a rent relief order reduces the rent payable by up to 90% but does not otherwise affect the tenancy. The order falls when the work has been completed or the repairing standard order is revoked, and a rent relief order may be revoked by the Committee at any time.
53. **Section 28** makes it an offence for a landlord to fail to comply with a repairing standard enforcement order or to enter into a tenancy or occupancy arrangement while a repairing standard enforcement order is in effect, unless the Committee consents.
54. The work of the Panel will be the subject of an annual report. **Section 29** sets out what the report should cover and that the report must be submitted to the Scottish Ministers, who must lay any report before the Scottish Parliament. The report will be prepared by the President of the Panel and will cover the work of the President, the Panel and the Private Rented Housing Committees in the period up to 31 December each year.