



# Housing (Scotland) Act 2006

## 2006 asp 1

### PART 1

#### HOUSING STANDARDS

#### CHAPTER 4

##### THE REPAIRING STANDARD

##### *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.

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- (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).

## 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).

### Commencement Information

- II** S. 22 wholly in force at 3.9.2007; s. 22 not in force at Royal Assent see s. 195(3); s. 22(5) in force for certain purposes at 4.12.2006 by [S.S.I. 2006/569](#), [art. 2](#); s. 22 in force at 3.9.2007 by [S.S.I. 2007/270](#), {art. 3 Table}

## 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.

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- (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,

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- (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
  - (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—

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- (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)).

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- (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.
- (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.

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