



# Housing (Scotland) Act 2006

## 2006 asp 1

### PART 1

#### HOUSING STANDARDS

### CHAPTER 4

#### THE REPAIRING STANDARD

##### *Landlord's duty to repair and maintain*

## **12 Tenancies to which repairing standard duty applies**

- (1) This Chapter applies to any tenancy of a house let for human habitation unless it is—
- (a) a Scottish secure tenancy or a short Scottish secure tenancy,
  - (b) a tenancy of a house retained or purchased by a local authority under section 121 of the 1987 Act for use as housing accommodation,
  - (c) a tenancy of a house which is—
    - (i) on land comprised in a lease constituting—
      - (A) a 1991 Act tenancy (within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11)),
      - (B) a short limited duration tenancy (within the meaning of that Act), or
      - (C) a limited duration tenancy (within the meaning of that Act),and
    - (ii) occupied by the tenant of the relevant lease,
  - (d) a tenancy of a house on a croft (within the meaning of the Crofters (Scotland) Act 1993 (c. 44)), or
  - (e) a tenancy of a house on a holding situated outwith the crofting counties (within the meaning of that Act of 1993) to which any provision of the Small Landholders (Scotland) Acts 1886 to 1931 applies.
- (2) A reference in this Chapter to a tenancy refers only to a tenancy to which this Chapter applies.

### **13 The repairing standard**

- (1) A house meets the repairing standard if—
  - (a) the house is wind and water tight and in all other respects reasonably fit for human habitation,
  - (b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,
  - (c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order,
  - (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
  - (e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, and
  - (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- (2) In determining whether a house meets the standard of repair mentioned in subsection (1)(a), regard is to be had to the extent (if any) to which the house, by reason of disrepair or sanitary defects, falls short of the provisions of any building regulations.
- (3) In determining whether a house meets the standard of repair mentioned in subsection (1)(b), regard is to be had to—
  - (a) the age, character and prospective life of the house, and
  - (b) the locality in which the house is situated.
- (4) The reference in subsection (1)(c) to installations in a house includes reference to installations outwith the house which, directly or indirectly, serve the house and which the owner is responsible for maintaining (solely or in common with others) by virtue of ownership, any real burden or otherwise.
- (5) In determining whether a house meets the standard of repair mentioned in subsection (1)(f), regard is to be had to any building regulations and any guidance issued by the Scottish Ministers on provision for detecting fires and for giving warning in the event of fire or suspected fire.

### **14 Landlord's duty to repair and maintain**

- (1) The landlord in a tenancy must ensure that the house meets the repairing standard—
  - (a) at the start of the tenancy, and
  - (b) at all times during the tenancy.
- (2) The duty imposed by subsection (1) includes a duty to make good any damage caused by carrying out any work for the purposes of complying with the duty in that subsection.
- (3) The duty imposed by subsection (1)(b) applies only where—
  - (a) the tenant notifies the landlord, or
  - (b) the landlord otherwise becomes aware,that work requires to be carried out for the purposes of complying with it.

- (4) The landlord complies with the duty imposed by subsection (1)(b) only if any work which requires to be carried out for the purposes of complying with that duty is completed within a reasonable time of the landlord being notified by the tenant, or otherwise becoming aware, that the work is required.

## **15 Application of duty in relation to flats etc.**

- (1) Where a house forms part only of any premises, the reference in section 13(1)(b) to the house includes reference to any part of those premises which the owner of the house is responsible for maintaining (solely or in common with others) by virtue of ownership, any real burden or otherwise.
- (2) Nothing in subsection (1) requires the landlord to carry out any work unless any part of the premises, or anything in the premises, which the tenant is entitled to use is adversely affected by the disrepair or failure to keep in proper working order.

## **16 Exceptions to landlord's repairing duty**

- (1) The duty imposed by section 14(1) does not require—
- (a) any work to be carried out which the tenant is required by the terms of the tenancy to carry out,
  - (b) any work to be carried out for which the tenant—
    - (i) is liable by virtue of the tenant's duty to use the house in a proper manner, or
    - (ii) would be so liable but for any express undertaking on the landlord's part,
  - (c) the house to be rebuilt or reinstated in the event of destruction or damage by fire or by storm, flood or other inevitable accident, or
  - (d) the repair or maintenance of anything that the tenant is entitled to remove from the house.
- (2) The exception made by subsection (1)(a) applies only if the tenancy concerned is—
- (a) for a period of not less than 3 years, and
  - (b) not determinable at the option of either party within 3 years of the start of the tenancy.
- (3) Where the terms of a tenancy are not agreed until after the tenancy starts, the tenancy is, for the purposes of subsection (2), to be treated as starting on the date of agreement.
- (4) A landlord is not to be treated as having failed to comply with the duty imposed by section 14(1) where the purported failure occurred only because the landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights.

## **17 Prohibition on contracting out**

- (1) The terms of a tenancy and of any other agreement between the landlord and the tenant are of no effect in so far as they purport to—
- (a) require the tenant to carry out, or to pay for or contribute towards the cost of, any work which the landlord requires to ensure be carried out for the purposes of complying with the duty imposed by section 14(1),

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- (b) exclude or limit that duty, or
- (c) provide for termination of the tenancy, or impose on the tenant any penalty, disability or obligation, in the event of the tenant enforcing compliance by the landlord of that duty.

(2) This section is subject to any contrary provision made by order under section 18.

## **18 Contracting out with consent of sheriff**

- (1) The sheriff may, on the application of the landlord or the tenant, by order exclude or modify the application to the tenancy of any of the provisions of sections 14, 15 and 17.
- (2) An order under subsection (1) may be made only if—
  - (a) the other party under the tenancy consents, and
  - (b) the sheriff, having regard to the terms of the tenancy and to all the circumstances, considers that it is reasonable to do so.

## **19 Pre-tenancy inspection**

The landlord must—

- (a) inspect the house before the tenancy starts for the purpose of identifying any work necessary to comply with the duty imposed by section 14(1)(a), and
- (b) notify the tenant of any such work.

## **20 Tenant’s right to information about landlord’s duty**

- (1) The landlord must, on or before the start of a tenancy, provide the tenant with written information about the effect of this Chapter in relation to the tenancy.
- (2) The Scottish Ministers may issue guidance to such persons as they think fit about the form and content of information to be provided under subsection (1) and the manner in which the information should be provided.
- (3) Any landlord to whom such guidance is issued must have regard to it.
- (4) The Scottish Ministers may vary or revoke any such guidance.

### *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.
- (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).

## **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,

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- (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.
- (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—

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- (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,
- (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—

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- (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—
    - (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)).

- (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.