



# Housing (Scotland) Act 2006

## 2006 asp 1

### PART 7

#### REPAYMENT CHARGES

#### 172 Repayment charges

- (1) A local authority entitled to recover a sum under section 59(1) or (2) [<sup>F1</sup>, section 61(3A), subsection (6A) below][<sup>F2</sup>, paragraph 6(1) of schedule 5 or section 4A(5) of the Tenements (Scotland) Act 2004 (asp 11)] may make in favour of itself a charge (a “repayment charge”)—
- (a) specifying the repayable amount and the [<sup>F3</sup>property] concerned, <sup>F4</sup>...
  - (b) providing that the [<sup>F3</sup>property] concerned is charged with the repayable amount.
  - [<sup>F5</sup>(c) providing that the repayable amount is payable in the number of equal annual instalments and on the date in each year determined under subsection (3)(a),
  - (d) providing that in default of such payment each instalment, together with any amount recoverable in respect of that instalment under subsection (6A), is to be separately recoverable as a debt, and
  - (e) providing that if immediately after the final instalment falls due any balance of the repayable amount remains unpaid, that balance is immediately due for repayment and is recoverable as a debt.]
- (2) The repayable amount is the lowest of—
- (a) the amount recoverable under section 59(1) or (2) [<sup>F6</sup>, section 61(3A), subsection (6A) below, paragraph 6(1) of schedule 5 or section 4A(5) of the Tenements (Scotland) Act 2004],
  - (b) any lower amount determined by the local authority, and
  - (c) any amount which the Scottish Ministers by order prescribe as the maximum repayable amount.
- [<sup>F7</sup>(3) The local authority must—
- (a) determine—
    - (i) the number of equal annual instalments, being no fewer than 5 and no more than 30, in which the repayable amount is to be paid, and
    - (ii) the date in each year on which the instalment becomes due, and

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- (b) notify the owner of its determination under paragraph (a).]
- (4) The local authority must register a repayment charge in the appropriate land register.
- [<sup>F8</sup>(4A) The owner of a property who is liable for the repayable amount does not, by virtue only of ceasing to be such an owner, cease to be liable for the repayable amount.]
- (5) The owner of, or any other person interested in, any [<sup>F9</sup>property] subject to a repayment charge may at any time redeem the repayable amount early by paying to the local authority—
- (a) such sum as the owner or other person may agree with the local authority, or
  - (b) failing such agreement, such sum as the Scottish Ministers may determine.
- (6) The local authority must, on receiving—
- (a) payment of the repayable amount in accordance with the repayment charge, or
  - (b) a sum redeeming the repayable amount under subsection (5),
- register a discharge of the repayment charge in the appropriate land register.
- [<sup>F10</sup>(6A) A local authority may recover—
- (a) the amount of any fee payable in respect of registering a repayment charge or a discharge of such a charge,
  - (b) any administrative expenses incurred by it in connection with the registration, and
  - (c) interest, at such reasonable rate as it may determine, from the date when a demand for payment is served until the whole amount is paid,
- from the owner of the [<sup>F11</sup>property] concerned.]
- [<sup>F12</sup>(6B) Subsection (6A)(c) does not apply where the recoverable amount relates to a sum the local authority is entitled to recover under section 4A(5) of the Tenements (Scotland) Act 2004 (asp 11).]
- (7) Where a repayment charge is made in respect of expenses incurred by a local authority in demolishing a house, references in this section and in section 173 to [<sup>F13</sup>property] are to be read as references to the site of the demolished house.
- (8) This section does not apply in relation to—
- (a) the recovery of sums under section 59(2) from a landlord who is not the owner of the [<sup>F14</sup>property] concerned,
  - (b) [<sup>F14</sup>property] which is not a building.
- [<sup>F15</sup>(9) In this section and in section 173, “ property ” means a place which is—
- (a) living accommodation, or
  - (b) non-residential premises within the meaning of section 69(3).]

#### Textual Amendments

- F1** Words in s. 172(1) inserted (1.3.2011) by [Housing \(Scotland\) Act 2010 \(asp 17\)](#), **ss. 150(4)(a)**, 166(2); [S.S.I. 2011/96](#), art. 2, Sch.
- F2** Words in s. 172(1) substituted (1.4.2015) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 85(2)(a)**, 104(3); [S.S.I. 2015/122](#), art. 2
- F3** Word in s. 172(1) substituted (1.4.2015) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 90(1)(a)**, 104(3); [S.S.I. 2015/122](#), art. 2

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- F4** Word in s. 172(1) repealed (1.4.2015) by Housing (Scotland) Act 2014 (asp 14), **ss. 91(1)(a)(i)**, 104(3); S.S.I. 2015/122, art. 2
- F5** S. 172(1)(c)-(e) inserted (1.4.2015) by Housing (Scotland) Act 2014 (asp 14), **ss. 91(1)(a)(ii)**, 104(3); S.S.I. 2015/122, art. 2
- F6** Words in s. 172(2)(a) substituted (1.4.2015) by Housing (Scotland) Act 2014 (asp 14), **ss. 85(2)(b)**, 104(3); S.S.I. 2015/122, art. 2
- F7** S. 172(3) substituted (1.4.2015) by Housing (Scotland) Act 2014 (asp 14), **ss. 91(1)(b)**, 104(3); S.S.I. 2015/122, art. 2
- F8** S. 172(4A) inserted (1.4.2015) by Housing (Scotland) Act 2014 (asp 14), **ss. 91(1)(c)**, 104(3); S.S.I. 2015/122, art. 2
- F9** Word in s. 172(5) substituted (1.4.2015) by Housing (Scotland) Act 2014 (asp 14), **ss. 90(1)(b)**, 104(3); S.S.I. 2015/122, art. 2
- F10** S. 172(6A) inserted (1.3.2011) by Housing (Scotland) Act 2010 (asp 17), **ss. 150(4)(b)**, 166(2); S.S.I. 2011/96, art. 2, Sch.
- F11** Word in s. 172(6A) substituted (1.4.2015) by Housing (Scotland) Act 2014 (asp 14), **ss. 90(1)(c)**, 104(3); S.S.I. 2015/122, art. 2
- F12** S. 172(6B) inserted (1.4.2015) by Housing (Scotland) Act 2014 (asp 14), **ss. 85(2)(c)**, 104(3); S.S.I. 2015/122, art. 2
- F13** Word in s. 172(7) substituted (1.4.2015) by Housing (Scotland) Act 2014 (asp 14), **ss. 90(1)(d)**, 104(3); S.S.I. 2015/122, art. 2
- F14** Word in s. 172(8) substituted (1.4.2015) by Housing (Scotland) Act 2014 (asp 14), **ss. 90(1)(e)**, 104(3); S.S.I. 2015/122, art. 2
- F15** S. 172(9) inserted (1.4.2015) by Housing (Scotland) Act 2014 (asp 14), **ss. 90(1)(f)**, 104(3); S.S.I. 2015/122, art. 2

### **[<sup>F16</sup>172A Repayment charge: appeals to the sheriff**

- (1) A person aggrieved by a determination under section 172(3)(a)(i) may appeal to the sheriff.
- (2) On an appeal under this section the sheriff may make such order relating to the number of annual instalments as the sheriff thinks fit.
- (3) The decision of the sheriff on appeal under this section is final.]

#### **Textual Amendments**

- F16** S. 172A inserted (1.4.2015) by Housing (Scotland) Act 2014 (asp 14), **ss. 91(2)**, 104(3); S.S.I. 2015/122, art. 2

### **173 Effect of registering repayment charges etc.**

- (1) A registered repayment charge is conclusive evidence that the charge specified in it has been created in respect of the [<sup>F17</sup>property] specified in it.
- (2) A registered repayment charge constitutes a charge on the [<sup>F18</sup>property] specified in it and has priority over—
  - (a) all future burdens and incumbrances on the same [<sup>F18</sup>property], and
  - (b) all existing burdens and incumbrances on the same [<sup>F18</sup>property] except any charges created or arising under—
    - <sup>F19</sup>(i) .....

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- (ii) any local Act authorising a charge for recovery of expenses incurred by a local authority,
  - (iii) Schedule 9 of the 1987 Act,
  - (iv) section 172, or
  - (v) any Act authorising advances of public money.
- (3) A registered repayment charge is enforceable at the instance of the local authority against any person deriving title to the charged [<sup>F20</sup>property].
- (4) But it is not enforceable against—
- (a) a third party who acquires right to the charged [<sup>F21</sup>property] (whether title has been completed or not) in good faith and for value before the repayment charge is registered, or
  - (b) any person deriving title from such third party.
- (5) A registered discharge of a repayment charge is conclusive evidence that the charge concerned has been discharged.

#### Textual Amendments

- F17** Word in s. 173(1) substituted (1.4.2015) by Housing (Scotland) Act 2014 (asp 14), ss. 90(2)(a), 104(3); S.S.I. 2015/122, art. 2
- F18** Word in s. 173(2) substituted (1.4.2015) by Housing (Scotland) Act 2014 (asp 14), ss. 90(2)(b), 104(3); S.S.I. 2015/122, art. 2
- F19** S. 173(2)(b)(i) repealed (1.10.2009) by Public Health etc. (Scotland) Act 2008 (asp 5), s. 128(2), Sch. 3 Pt. 1 (with s. 127); S.S.I. 2009/319, art. 2(a), Sch. 1
- F20** Word in s. 173(3) substituted (1.4.2015) by Housing (Scotland) Act 2014 (asp 14), ss. 90(2)(c), 104(3); S.S.I. 2015/122, art. 2
- F21** Word in s. 173(4) substituted (1.4.2015) by Housing (Scotland) Act 2014 (asp 14), ss. 90(2)(d), 104(3); S.S.I. 2015/122, art. 2

#### 174 Repayment charges: further provision

The Scottish Ministers may by order—

- (a) specify the form which a repayment charge, or a discharge of a repayment charge, must be in,
- (b) make such further provision as they think fit about the repayment or early redemption of amounts repayable under a repayment charge.

#### [<sup>F22</sup>174A Repayment charges: registered social landlords

- (1) The Scottish Ministers may by regulations make provision allowing a registered social landlord to make in favour of itself a charge to recover a sum which—
- (a) the registered social landlord is entitled to recover from an owner of a flat in a tenement, and
  - (b) represents the owner's share of scheme costs as determined in accordance with section 4A(3) of the 2004 Act.
- (2) Regulations under subsection (1) may, in particular—
- (a) apply (with or without modifications), or make provision similar to, any provision of or made under this Part,

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- (b) prescribe conditions which must apply before a charge can be made in relation to a sum mentioned in subsection (1), including conditions relating to—
    - (i) the registered social landlord which may make a charge,
    - (ii) the circumstances leading to the sum becoming recoverable by the registered social landlord,
  - (c) modify the Tenement Management Scheme or its operation,
  - (d) make provision about rights of appeal which apply in relation to—
    - (i) the decision to impose a charge,
    - (ii) the terms of the charge.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult—
- (a) such bodies representing local authorities,
  - (b) such bodies representing registered social landlords,
  - (c) such other persons,
- as they think fit.
- (4) Regulations under subsection (1) may modify any enactment (including this Act).
- (5) In this section—
- “ owner of a flat in a tenement ” is to be construed in accordance with the definition of “owner” in section 28 of the 2004 Act,
  - “ registered social landlord ” means a body registered in the register maintained under section 20(1) of the Housing (Scotland) Act 2010 (asp 17),
  - “ Tenement Management Scheme ” has the same meaning as in the 2004 Act, and
  - “ the 2004 Act ” means the Tenements (Scotland) Act 2004 (asp 11). ]

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**Textual Amendments**

**F22** S. 174A inserted (20.11.2014) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), ss. **85(3)**, 104(3); S.S.I. 2014/264, art. 2, Sch.

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