

HOUSING (SCOTLAND) ACT 2014

EXPLANATORY NOTES

THE STRUCTURE AND A SUMMARY OF THE ACT

Part Six – Private Housing Conditions

168. [Part 6](#) amends local authority powers to enforce repairs and maintenance in private homes.

Tenement management scheme

169. [Section 85\(1\)\(b\)](#) inserts a new section 4A in the Tenements (Scotland) Act 2004 (“the Tenements Act”). This allows local authorities to pay a missing share when the majority of owners in a tenement block have agreed to carry out work to repair or maintain their property, and one or more of the owners has not paid their share of the cost of the work (where the owner is unable or unwilling to do so, or where the owners cannot be identified or found). New section 4A(5) allows the local authority to recover the costs of the missing share and any associated administrative expenses from the owner on whose behalf it was paid. Before exercising this power, the local authority must notify the owner who has not paid a share that it intends to make the payment itself (new section 4A(4)).
170. [Section 85\(1\)\(d\)](#) amends rule 5 of the Tenement Management Scheme in schedule 1 to the Tenements Act, so that the other owners are not liable for the costs of another owner which are met by a share paid by a local authority.
171. [Section 85\(2\)](#) amends section 172 of the Housing (Scotland) Act 2006 (“the 2006 Act”) so that local authorities can use repayment charges to recover the costs of paying missing shares from the owner on whose behalf the missing share was paid.
172. [Section 85\(3\)](#) inserts a new section 174A in the 2006 Act so that the Scottish Ministers may make regulations to allow registered social landlords to recover by repayment charge the costs of missing shares paid for repair and maintenance work on behalf of private home owners in a tenement. Section 174A(3) requires the Scottish Ministers to carry out a consultation exercise before making any regulations. Section 85(4) provides that the regulations are to be made by affirmative procedure.

Notice of potential liability for costs: notice of discharge

173. [Section 86](#) makes amendments to the Title Conditions (Scotland) Act 2003 (“the 2003 Act”) and the Tenements (Scotland) Act 2004 (“the Tenements Act”). These amendments provide for a discharge procedure in respect of notices of potential liability for costs registered under section 10(2) of the 2003 Act and section 12(3) of the Tenements Act. Currently, section 10A(3) of the 2003 Act and section 13(3) of the Tenements Act provide that a notice of potential liability for costs will expire at the end of three years unless it is renewed. This will continue, but the amendment will allow the notice of potential liability to be discharged during the three-year period or any renewal period.

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(asp 14) which received Royal Assent on 1 August 2014*

174. Subsection (1) inserts new subsections (3A) and (3B) into section 10A of the 2003 Act. Subsection (2)(a) inserts new subsections (3A) and (3B) into section 13 of the Tenements Act.
175. Under the new sections 10A(3A) of the 2003 Act and 13(3A) of the Tenements Act, an owner of a burdened property can apply to register a notice of discharge if the notice of potential liability for costs has not expired, the liability for costs in relation to that property has been fully discharged and consent from the person who registered the notice has been obtained. Evidence of such consent would need to be included with the application to register the discharge notice.
176. The new sections 10A(3B)(a) of the 2003 Act and 13(3B)(a) of the Tenements Act provide that the notice of discharge must be submitted in a form prescribed by the Scottish Ministers by order.
177. It is possible to register a notice of potential liability for costs against more than one flat or property. The new sections 10A(3B)(b) of the 2003 Act and 13(3B)(b) of the Tenements Act provide that registration of a notice of discharge in relation to a property discharges the notice of potential liability for costs only to the extent that it applies to that property.
178. Subsection (2)(b) amends the definition of “register” in section 29 of the Tenements Act to include a notice of discharge.

Work notices

179. [Section 87](#) amends section 30(1) of the 2006 Act, which provides powers for local authorities to issue work notices to require owners to carry out work on substandard houses. The amendment inserts an additional ground on which the local authority may issue a work notice, which is where the work is needed to improve the safety or security of any house (whether or not situated in a housing renewal area).

Maintenance orders and plans

180. [Section 88](#) amends section 42(2) of the 2006 Act, which provides powers for local authorities to issue maintenance orders to require owners to prepare a maintenance plan for securing the maintenance of the house to a reasonable standard. The amendment inserts an additional ground on which the local authority may issue a maintenance order, which is where a work notice has been served and no certificate has been issued to confirm that the work required to be carried out by the work notice has been completed.
181. [Section 89\(3\)](#) repeals the provisions in section 61 of 2006 Act which require local authorities to register in the appropriate land register maintenance plans approved or devised under section 46 of the 2006 Act, or varied under section 47, and notices of revocation of a maintenance plan under section 47. [Section 89\(1\)](#) amends section 24(1) of the Building (Scotland) Act 2003 to require local authorities to include a record of decisions to approve, devise, vary or revoke maintenance plans in the building standards register.
182. [Section 89\(2\)](#) amends section 47 of the 2006 Act, which allows local authorities to vary or revoke maintenance plans. The amendment allows local authorities to revoke a maintenance plan where the local authority is satisfied that a property factor has been appointed to manage or maintain the premises to which the plan relates. “Property factor” is defined in section 2 of the Property Factors (Scotland) Act 2011.

Repayment charges

183. [Section 90](#) amends sections 172 and 173 of the 2006 which allow local authorities to recover costs in connection with enforcement of repairs and maintenance to living accommodation by creating a repayment charge. A repayment charge is a charge against property and has priority over all future burdens and most existing burdens on the

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property. The amendment widens the scope of sections 172 and 173 to include any non-residential parts of buildings that contain living accommodation.

184. **Section 91(1)** amends section 172 of the 2006 Act so that a local authority may determine that a repayment charge is repayable in no fewer than 5 and no more than 30 equal annual instalments. The amendment also provides for continuing liability of an home owner for the outstanding debt that is the subject of the repayment charge. Section 91(2) inserts a new section 172A in the 2006 Act which provides a right of appeal against the determination of the number of annual payments due under a repayment charge.

Charging orders

185. **Section 92** modifies the period of recovery for charging orders made under Schedule 9 to the Housing (Scotland) Act 1987, which relates to recovery of expenses by charging orders in favour of local authorities after the authority has carried out certain work on a building. These modifications make similar provision for charging orders under the 1987 Act to the changes relating to repayment charges under the 2006 Act that are described in the previous paragraph.
186. **Section 92** also amends paragraph 4 and repeals paragraph 6 of Schedule 9 to the 1987 Act. This is to remove references to feu duties.
187. The Abolition of Feudal Tenure etc. (Scotland) Act 2000 (“the 2000 Act”) abolished feu duties and related payments. Paragraph 4(b)(i) of Schedule 9 to the 1987 Act made provision on the priority between, on the one hand, a charging order under Schedule 9 and, on the other hand, feu duties and related payments. Paragraph 6 provided for recovery of charging order annuities in the same manner as feu duties. Given that feu duties and related payments have been abolished, there is no longer any need for these provisions.
188. **Section 92(2)** and **(3)** makes consequential amendments to section 108(2) of the Civic Government (Scotland) Act 1982 and section 19(3) of the Crofters (Scotland) Act 1993 to remove references to paragraph 4(b)(i) of Schedule 9 to the 1987 Act.