

Explanatory Notes to Housing (Scotland) Act 2006

2006 Chapter 1

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These Notes relate to the Housing (Scotland) Act 2005 (asp 1) which received Royal Assent on 5 January 2006

HOUSING (SCOTLAND) BILL ACT 2006

(asp 1)

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

3. The Act is in 10 parts.
4. These are:
 - Part 1 - Housing standards
 - Part 2 - Scheme of assistance for housing purposes

- Part 3 - Provision of information on sale of house
- Part 4 - Tenancy deposits
- Part 5 - Licensing of houses in multiple occupation
- Part 6 - Mobile homes
- Part 7 - Repayment charges
- Part 8 - Miscellaneous
- Part 9 - Rights of entry
- Part 10 - General and supplementary

Background

5. The main purpose of the Act is to address problems of condition and quality in private sector housing (although some provisions also relate to the social rented sector). Owner occupation is now the largest tenure and the whole private sector, including private rented housing, amounts to over 70% of Scottish housing.

6. The findings of the 2002 Scottish House Condition Survey showed the extent of these problems. For example, in the owner-occupied sector 27% of houses and 40% of flats had at least one element in a state of urgent disrepair (which means that, if repair is not carried out, the fabric of the building would deteriorate further or health and safety would be placed at risk).

7. The approach taken by this Act is based on the work of the Housing Improvement Task Force, which was set up by Ministers in December 2000. Its remit was to consider issues relating to housing quality in the private sector and the house buying and selling process. The Task Force's first report, *Issues in Improving Quality in Private Housing (2002)*, confirmed that, although most private sector housing is in good condition, a significant proportion is in poor repair. The Task Force published its final report and recommendations, *Stewardship and Responsibility: A Policy Framework for Private Sector Housing in Scotland*, in March 2003. The Act builds on those recommendations.

Overview of the Act

8. Part 1 of the Act deals with various aspects of housing standards. Chapter 1 gives a local authority power to designate as a Housing Renewal Area an area with a concentration of houses that are sub-standard or with any houses that are damaging the amenity of the area because of their

appearance or state of repair. Within a Housing Renewal Area the local authority will be able to implement an action plan to improve the area.

9. Chapter 2 requires a local authority to include in its local housing strategy details of its policy for identifying areas that should be designated as Housing Renewal Areas, a strategy for dealing with housing that is below the Tolerable Standard, and a strategy for using the scheme of assistance to improve house conditions. Chapter 3 amends the Tolerable Standard, in relation to thermal insulation, waterless closets and the electrical supply.

10. Chapter 4 defines the statutory repairing standard that has to be met by a private landlord. It also expands the functions of the Rent Assessment Panel (and renames it the Private Rented Housing Panel) to provide private tenants with a new means of enforcing the repairing standard.

11. Chapter 5 deals with the issue by local authorities of work notices requiring work to be carried out on houses in Housing Renewal Areas and on substandard houses. Local authorities may also require demolition of houses in serious disrepair. The Act gives them powers to carry out required work and demolitions when the owner fails to do so.

12. Local authorities are given powers to issue maintenance orders in Chapter 6. A maintenance order requires the drawing up and implementation of a plan to ensure the maintenance of a house or houses to a reasonable standard. If the owners do not draw up or implement a plan, the local authority may do so.

13. Chapter 7 gives a new right to a private sector tenant to carry out adaptations to meet the needs of a disabled occupant or to install central heating and other energy efficiency measures under Scottish Executive programmes. The tenant must obtain the consent of the landlord, who may withhold it only on reasonable grounds.

14. Chapter 8 deals with appeals and other matters, including listed buildings and the service of documents, while Chapter 9 defines some of the terms used in Part 1 of the Act.

15. Part 2 sets out the details of the scheme of assistance for housing purposes. This allows local authorities to provide assistance to house owners for repairs, improvements and adaptations, as well as the acquisition or sale of a house. The assistance can take the form of grants, loans, subsidised loans, practical assistance, information or advice. In certain circumstances local authorities must provide assistance. This Part replaces the scheme of improvement grants contained in Part 13 of the Housing (Scotland) Act 1987 and section 92(3) of the Housing (Scotland) Act 2001.

16. Part 3 gives the Scottish Ministers powers to require sellers of houses or their agents to provide specified information to potential buyers.

Ministers also have powers to require additional information to be provided to tenants of local authorities and registered social landlords who request a valuation in connection with the right to buy.

17. Part 4 gives the Scottish Ministers powers to establish conditions for and to approve a scheme or schemes for the protection of tenancy deposits in the private rented sector.

18. In Part 5 the system of licensing of houses in multiple occupation, which is presently founded in secondary legislation under the Civic Government (Scotland) Act 1982, is re-enacted in primary legislation, with some changes to its details.

19. Part 6 amends legislation relating to occupiers of mobile homes who let stances. This is in relation to the provision of an advance written statement of terms. Condition, but not age, can be taken into account when deciding whether a mobile home is detrimental to a site. There is also a provision to improve protection for mobile home occupiers against harassment.

20. Part 7 gives a local authority power to recover amounts due to it for certain activities carried out in relation to living accommodation by placing a repayment charge on the living accommodation concerned (or its site in the case of a demolished house).

21. Part 8 contains miscellaneous provisions. These include developing the landlord registration provisions in the Antisocial Behaviour etc. (Scotland) Act 2004 by giving Ministers powers to issue a Letting Code and providing that the Code, together with the nature of any agency arrangement, should be taken into account by local authorities when deciding whether a landlord is a fit and proper person to be letting houses; by managing the public availability of registered information; and by other adjustments. There are provisions relating to the delegation of functions by, and permissible purposes of, registered social landlords. Ministers are required to publish a strategy for improving energy efficiency in living accommodation. The Housing (Scotland) Act 1988 is amended to allow a landlord to seek possession, on grounds of antisocial behaviour, of a house let under a contractual assured tenancy despite the absence of a reference to such a proceeding in the terms of tenancy.

22. Part 9 deals with rights of local authorities, Private Rented Housing Committees, house owners, landlords and the police to enter houses for specified purposes, such as carrying out work.

23. Part 10 deals with various technical matters.

24. Commentary explaining the provisions in each Part is provided below.

COMMENTARY ON PARTS

PART 1 - HOUSING STANDARDS

Chapter 1 - Housing renewal areas

Designation of Housing Renewal Areas

25. **Section 1** sets out the criteria for a local authority to designate any locality as a housing renewal area (HRA). These are either that a significant number of the houses in that locality are sub-standard (for example, below the Tolerable Standard or in serious disrepair) or that the appearance or state of repair of any houses in the area is adversely affecting the amenity of the locality. This replaces the Housing Action Areas provisions in sections 89 to 91 of the Housing (Scotland) Act 1987.

26. The procedure for the declaration of a Housing Renewal Area is set out in **section 2, subsection (1)** of which provides that an HRA designation order must set out the reasons for designation (which must be from those set out in **section 1**) and that the order must include an HRA action plan and a map of the area covered by the plan. **Subsection (2)** establishes that the Scottish Ministers must approve a draft designation order before the order can be made.

27. **Schedule 1** details the procedure to be followed where a local authority proposes to designate an HRA. **Paragraph 1** sets out the procedure for notification in the proposed HRA (including who should be notified) and requires that the notice must give information on availability for inspection of the draft designation order, a general indication as to how the scheme of assistance will be applied, and the specific timescale for the local authority to receive representations (which is at local authority discretion, but must not be less than 3 months from the date on which the notice is given). After considering representations the local authority may submit the draft designation order to the Scottish Ministers for approval. Whether the draft is submitted for approval or the local authority chooses not to take forward the HRA, it must give notice of its decision in the same way that it gave notice of the proposal to declare an HRA. The local authority may modify the order to take account of representations, but it cannot extend the area covered by the draft order. The notification given where a draft order is submitted to the Scottish Ministers must contain information on the general effect of any significant modification.

28. **Paragraph 2** of **schedule 1** sets out how the Scottish Ministers should consider a draft designation order. Ministers may approve or reject a draft order, and can modify the draft order before they decide to approve or reject. Ministers may not modify the draft designation order to extend the HRA or to identify houses for demolition that were not in the draft order, as submitted by the local authority. In conjunction with **paragraph 4**, it also sets out circumstances where Ministers must consult with planning

authorities if they wish to make a modification affecting various listed or protected buildings. Ministers should give their decision as soon as reasonably practicable.

29. **Paragraph 3 of schedule 1** sets out the notification requirements where a local authority finally makes an HRA designation order. Notice must be given to each owner and occupier of each house in the HRA, in at least two newspapers circulating in the area and in any other way the local authority thinks fit. The notice must describe the general effect of the order, assistance to be offered under the scheme of assistance and where and when a copy of the order will be available for public inspection.

30. **Section 3** makes more detailed provision about HRA action plans. It defines an HRA action plan as a strategy for securing an improvement in the condition and quality of housing in the HRA. **Subsection (2)** requires that the action plan must identify houses in the area covered by the plan which require to be demolished or need work to bring them into (and keep them in) a reasonable state of repair or to enhance the amenity of the HRA. The plan must specify the work (and the standard of the work) required, along with any steps that the local authority requires to be taken in carrying out the work. This work can include demolition. The action plan must also set out how the scheme of assistance will apply where a house is affected by the action plan. **Subsection (3)** lists some examples of what work identified in the action plan may be intended to do. **Subsection (4)** allows for work to be carried out to houses adjacent to or associated with those identified in the action plan. This will, for example, allow work to be carried out to an identified house, which can only be completed by carrying out work on an adjacent house.

31. **Section 4** covers circumstances where the designation order may be varied. The local authority may vary an order on the request of an owner of a house identified in the action plan, but any variation can only apply to that house and the local authority must consult the owner and other people that it feels may be affected. The local authority may vary the designation order at any time in a way that does not significantly adversely affect any person. If a variation is made, the local authority must inform anyone it considers affected by the variation, describing the variation and stating where a copy of the modified designation order may be viewed.

32. **Section 5** covers circumstances where the designation order is revoked. The authority must revoke the order when the work is complete or as directed by the Scottish Ministers. The local authority can, with the consent of the Scottish Ministers, revoke the order if the circumstances which led to the order being made have changed. Where the order is revoked, works notices issued as part of the HRA will no longer have effect. The local authority must notify those it considers to be affected by a revocation, except where revocation is because all the work required has been completed.

33. **Section 6** gives the Scottish Ministers the power to give directions to local authorities about identifying areas suitable for designation as HRAs. Any local authority affected must comply with these directions. Directions can be general or specific, applying to a number of local authorities, an individual local authority as a whole, or to areas within an individual local authority, amongst other things.

34. **Section 7** requires the local authority to make available for free public inspection a copy of each HRA designation order in force for its area. The local authority can choose how to do this, but the copy orders must be reasonably obtainable.

Implementation of HRA action plans

35. **Section 8** requires that the local authority take reasonable steps to implement the action plan and as part of this inform owners and occupiers affected by the action plan about how it will do this. The local authority also must inform owners and occupiers on progress in implementing the action plan.

36. **Section 9** applies where a person is permanently displaced from his or her living accommodation as a result of the implementation of the HRA action plan. Where a person was residing in the affected living accommodation on the day that the draft designation order was notified to the occupier, then the local authority must secure that the person is provided with suitable alternative accommodation, where they are asked to do so by that person. If possible, the local authority should meet requests for accommodation within a reasonable distance of the affected living accommodation.

Chapter 2 - Strategic housing functions

37. **Section 10** amends the requirement in the Housing (Scotland) Act 2001 for local authorities to prepare a local housing strategy. It expands the purpose to be accomplished by the local authority to include 'improves the standard of housing in the authority's area'. It also adds a requirement that the local housing strategy must set out a strategy for identifying and dealing with houses which fail the Tolerable Standard, the local authority's policy for designating Housing Renewal Areas, and a strategy for improving the condition of houses through the use of the scheme of assistance powers in Part 2 of this Act.

Chapter 3 - The tolerable standard

38. **Section 11** extends the definition of a house meeting the Tolerable Standard (set out in section 86 of the Housing (Scotland) Act 1987) to include satisfactory thermal insulation and electrical safety. It also amends the existing reference in section 86 of the 1987 Act to include a waterless closet. The Scottish Ministers will have the power to issue guidance on the

tolerable standard, to which local authorities and others must have regard.

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.