

# HOUSING (SCOTLAND) ACT 2006

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## EXPLANATORY NOTES

### 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.

## ***Chapter 5 – Repair, improvement and demolition of houses***

### **Work notices and demolition notices**

55. **Section 30** provides that a local authority may require an owner of a house to carry out work as part of the implementation of a Housing Renewal Area action plan, or to bring any sub-standard house into a reasonable state of repair, by serving a work notice. The definition of sub-standard for the purpose of the notice is set out in **section 68**: a house is sub-standard if it does not meet the tolerable standard, is in a state of serious disrepair, or is in need of repair such that, if nothing is done, it is likely to deteriorate into serious disrepair or damage any other house or premises. **Section 62** sets out that a work notice must be served on each owner and occupier, any person holding a heritable security over the house, any person who receives rent for the house, and any other person appearing to the local authority to have an interest in the house. The notice is treated as being

served on the day that it is served on the owner. The notice is valid despite its not being served on persons other than the owner, if the local authority has tried to identify such persons, using its powers in **section 186**, but has been unable to do so.

56. The work notice must specify why the work needs to be carried out, the work that needs to be carried out, the period within which the work must be completed, and the standard the house must meet on completion of the work. The local authority must allow a period it considers reasonable for completion of the work, which must not be less than 21 days after the date of serving of the notice. The local authority can also specify in the notice what steps they require to be taken in the carrying out of the work.
57. **Section 31** gives the local authority the power to suspend the work notice if they believe that the work required will be detrimental to the health of any resident. The suspension can be lifted at any time. The local authority must notify the people on whom the original notice was served of any suspension or lifting of the suspension and may specify how the work should be carried out, in addition to, or in place of, the original (or subsequent) notice. Where a suspension is lifted the local authority can extend the period for completion of the work.
58. **Section 32** allows a local authority to revoke a work notice if the building concerned is demolished or the work is no longer necessary.
59. **Section 33** applies to a house identified for demolition in an HRA action plan as a result of serious disrepair. The local authority may require demolition by serving a demolition notice. The notice must specify why the house is to be demolished and the standard to which the demolition is to be carried out. This includes specifying the condition that the site is to be left in when work is completed. The notice will also state the time within which the demolition is to be carried out, which may not be less than 21 days.
60. **Section 34** allows the local authority to extend the period for completion of the work required by a work notice or demolition required by a demolition notice, if it considers that satisfactory progress has been made in carrying out the work or demolition, or if the owner has given a written undertaking that the work or demolition will be carried out by a later date, which date is considered to be satisfactory.

### **Enforcement by local authority**

61. Under **section 35**, where the owner of a house fails to comply with a work notice or demolition notice within the time required, the local authority may carry out the work required by the notice. The local authority may also do this where the owner has given notice to the local authority that he or she cannot carry out the work because of not having the necessary rights (and having been unable to acquire them) or that he or she considers that carrying out the work could endanger any person. In carrying out such work, the local authority may also carry out any additional work it finds to be necessary which could not reasonably have been anticipated when the original work notice or demolition notice was served. The additional work which may be carried out must be required to implement an HRA action plan or bring any sub-standard house into a reasonable state of repair. Before carrying out this additional work, the local authority must give 21 days notice. This notice requirement does not apply if the situation is urgent or if it would be impractical to carry out the work required by the original notice without carrying out the additional work that needs to be done.
62. **Section 36** enables a local authority to carry out work in relation to the repairing standard duty where a Private Rented Housing Committee notifies the local authority that a landlord is unable to comply with the duty or has failed to comply with a repairing standard enforcement order. If the landlord is unable to comply with the duty, the local authority may carry out the necessary work. If an order has been made, the local authority may carry out the works required by the order and any additional work which is found to be necessary to enable the work required by the order to be carried out. The local authority must give 21 days notice to the landlord and tenant of any works, unless

the situation is urgent or the works are additional works which have to be carried out before the works specified in the order can continue.

63. **Section 37** refers to circumstances where the local authority is required or authorised to carry out any work on a house, or to demolish it. If the local authority considers that the work is likely to endanger the occupant of any land, house or building, the authority can require the occupant to move out. The local authority must serve a notice on the occupant stating why they are required to move and giving the period within which they must do so. This period must begin not less than 14 days after the notice is served. This requirement to move stops having effect when the sheriff refuses to grant a warrant to require ejection under **section 38** or the work is completed.
64. **Section 38** stipulates that, if the occupant has not moved as required in terms of **section 37**, then the local authority can apply to the sheriff for a warrant of ejection, which he or she may grant if satisfied that the occupant is likely to be endangered. The warrant can include conditions (including conditions with respect to payment of rent) that the sheriff thinks are just and equitable. If the sheriff requires a further notice to be served, the warrant may not require the occupant to move until 14 days after the date on which this notice is served. Otherwise, the sheriff can decide when the warrant takes effect. The warrant cannot require an occupant to move unless the sheriff is satisfied that suitable alternative accommodation is available on reasonable terms. The sheriff's decision on the application is final. Where the sheriff does not grant a warrant for ejection, this does not invalidate the original notice or order upon which the warrant was sought. The power of the local authority to apply for a warrant, or for the sheriff to grant a warrant for ejection, is not affected by the provisions regarding tenancy rights of the Rent (Scotland) Act 1984 or Part 2 of the Housing (Scotland) Act 1988.
65. **Section 39** makes it an offence for anyone to occupy or permit the occupation of any land, house or building, from which a local authority has required an occupant to move under **section 37**. This applies only to new occupants, not to anyone who was occupying the property when the requirement to move was made. Where a person is guilty of an offence under this section, they can be liable to a fine of up to Level 5 on the standard scale or to imprisonment for a period of up to 3 months or to both.
66. Where a local authority is empowered by **section 35** to demolish a house, **section 40** gives it power to acquire the house and its site, either by agreement with its owner or, with Ministers' consent, compulsorily. Any compulsory purchase is regulated by the rules contained in the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.
67. **Section 41** authorises a local authority to sell off the materials resulting from the demolition of a house under **section 35** and to set off the money obtained against the expenses that it is entitled to recover under **section 59** (a local authority is not entitled to recover the expenses of demolition where it has acquired the house under **section 40**). Any surplus from the sale of materials after the expenses are met must be paid to the owner of the house.

## **Chapter 6 – Maintenance**

### **Maintenance orders**

68. **Section 42** gives a local authority the power to serve a maintenance order if it considers that benefit from work carried out under a work notice has been reduced or lost because of lack of maintenance or the house has not been, or is unlikely to be, maintained to a reasonable standard. The order requires the owner to prepare a maintenance plan for the house for a period of not more than 5 years, and to submit it to the local authority for approval by a date specified in the order.

## **Maintenance plans**

69. The content of the maintenance plan is described in [section 43](#). The plan must specify the maintenance to be carried out over the period of the plan, any steps to be taken to carry out maintenance, arrangements where items to be maintained under the plan are to be repaired or replaced, a timetable for these steps, and an estimate of costs in implementing the plan. [Section 44](#) makes clear that a maintenance plan can be required from owners jointly, where the parts concerned are common property of the owners or they are responsible for maintaining them. In these circumstances, the maintenance plan should show how the liability for the costs of carrying out the plan is apportioned. The plan may also require the appointment of a person to manage implementation. Where it applies to common property, the plan can require owners to pay into a maintenance account and set out the arrangements for the operation (and winding up and closure) of the account.
70. Under [section 45](#), the maintenance plan can relate to part of a building that is owned by some, but not all, owners in the building, but it cannot require an owner of a house to do anything to a part that the owner does not own or have responsibility for maintaining. There is similar provision for parts of a building which an owner has responsibility to maintain. The maintenance plan cannot apportion responsibility between owners in ways which conflict with real burdens, a development management scheme which applies, or the tenement management scheme (set out in the Tenements (Scotland) Act 2004), where that applies.
71. Under [section 46](#), the local authority may approve a maintenance plan, with or without modifications, provided it considers the plan contains all the required information and will ensure the house is maintained to the required standard. If the local authority rejects a plan submitted to it, it can make an order requiring a further plan to be prepared or prepare a plan itself. If a plan is not submitted at all, the authority can prepare a plan itself. The authority must notify the owners affected of its decision on a maintenance plan, if appropriate enclosing a copy of the plan. The local authority cannot approve a plan relating to three or more houses unless the owners of the majority of the houses have confirmed their approval of the plan. When the local authority serves notice of its approval, rejection or imposition of a maintenance plan, the maintenance order ceases to have effect. Where a plan is rejected, the local authority, if it wishes to require another maintenance plan to be produced, must serve a further maintenance order.
72. Local authorities have the power to vary or revoke plans in line with [section 47](#). The plan can be varied in any way that the local authority sees fit if there has been a change in circumstances or before the local authority does anything to carry out work to enforce the maintenance plan. The local authority may also vary the plan on application of the owners. The maintenance plan may be revoked by the local authority where implementation is impracticable and it is not possible to vary the plan to make it practicable. Notification of any variation or revocation must be provided.
73. [Section 48](#) makes clear that it is for the owner to secure the implementation of the maintenance plan. The local authority may pay grants under [section 51](#) towards the opening or winding up of a maintenance account (sometimes known in this case as a sinking fund) or take other actions to help the owners implement the plan, but it cannot make any payments towards the works themselves (except in line with [section 50](#)).
74. Local authorities are given powers to enforce maintenance plans in [section 49](#). Where a local authority reaches the view that the owner of a house has not carried out the actions required by a maintenance plan, it may do whatever it considers necessary to secure the implementation of the plan. It may not make any payments to any owners (except in line with [section 50](#)) or into a maintenance account for this purpose, except towards the cost of opening or winding up a maintenance account.



## **Recovery of maintenance costs**

75. **Section 50** outlines the power of the majority of owners in a building with commonly-owned parts to recover maintenance costs. This can apply where the majority of owners are required or have agreed to carry out maintenance work, and a notice has been served on each owner who is liable to pay a share of the costs, asking them to pay that share into a maintenance account. The notice must set out what is to be done and by when, how this has been agreed or required, what it will cost, how the costs are apportioned between the owners, and details of the account into which the money is to be paid. If, after receiving such a notice, any owner fails to pay their share into the maintenance account, other owners can apply to the local authority to make a deposit into the maintenance account for the non-paying owner's share. The local authority can only make a deposit if the apportionment of the non-paying owner's share does not conflict with any real burden, a development management scheme or the tenement management scheme, if it applies. The proposed maintenance work must be reasonable and the local authority must be satisfied that the non-paying owner is either unable to pay or cannot be found. The authority may invite the owner concerned to make representations about their financial circumstances. The other owners retain the right to recover costs from the owner concerned. Local authorities must have regard to any guidance issued by the Scottish Ministers in relation to this section.

## **Maintenance accounts**

76. **Section 51** gives a local authority the power to pay grants towards the expenses of house owners in opening, winding up or closing any maintenance account, including, but not limited to, a maintenance account established to hold funds to pay the costs of implementing a maintenance plan.

## **Chapter 7 – Right to adapt rented houses**

77. **Section 52** gives every private sector tenant the rights to carry out work, either to make the house suitable for the accommodation, welfare or employment of any disabled person who occupies it as his or her only or main home, or relating to the installation of central heating and other energy efficiency measures under the Executive's central heating programme or similar schemes promoted under the same powers. The exercise of this right requires the consent of the landlord, which must not be withheld except on reasonable grounds. On receiving an application to carry out such work, the landlord may consent, consent subject to reasonable conditions, or refuse consent, so long as refusal is not unreasonable. The landlord must give the tenant notice of his decision within one month of the application, including reasons for any refusal or conditions attached. Failure to do so will be regarded as refusal.
78. **Section 53** states the matters that the landlord may have regard to in considering an application. Reasonable conditions that the landlord may attach to consent include specifying the standard of the work and requiring the tenant to reinstate the house to its previous condition at the end of the tenancy. If a condition specifies the standard of the work, the landlord must take into account the age and condition of the house and the cost of complying with the condition. It will be considered reasonable for a landlord to refuse consent if the proposed work would breach any real burden or other legal obligation on the landlord.
79. **Section 54** provides that any code of practice issued by the Disability Rights Commission in relation to the exercise of the tenant's right to make adaptations under the Housing (Scotland) Act 2001 has to be taken into account by the court when dealing with a case arising from that right.

## **Chapter 8 – Supplemental provisions, including appeals**

### **Supplemental**

80. **Section 55** provides that, if the owner or landlord of the house agrees and pays the costs, a local authority may carry out, or arrange for the carrying out of, any work or demolition resulting from this Part.
81. **Section 56** applies where an occupier moves out of a house to allow work required or authorised by this Part of the Act to be carried out, whether moving was required by the local authority, in terms of a warrant of ejection or otherwise. The tenancy or occupancy agreement is not taken to be terminated, varied or altered as a result (if the occupier chooses). That person can resume lawful occupation on the same terms and conditions as he or she enjoyed before leaving.
82. **Section 57** deals with people who are authorised or entitled to do anything under this Part. If anyone, having received notice of the intended action, prevents or obstructs a person from doing something they are authorised or entitled to do, the sheriff can order the person causing the obstruction to allow access. If they fail to comply with the order from the sheriff, then they are guilty of an offence and on summary conviction liable to a fine of up to level 3 on the standard scale. This section does not apply in relation to rights of entry under Part 9, except the right of the landlord to enter the house to check whether it complies with the repairing standard.
83. **Section 58** applies where the local authority is going to carry out work under a work notice or under the repairing standard on, or demolish under a demolition notice, a building which is protected under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. In these circumstances the local authority must consult the Scottish Ministers, the planning authority where it is not the local authority, and any other persons that the local authority thinks fit. Any requirements or authorisation under Part 1 of the Act only apply insofar as they are not inconsistent with the 1997 Act.
84. The local authority power to recover expenses is provided for in **section 59**. The local authority may recover expenses from the owner for work carried out in relation to work notices or demolition notices, enforcement of maintenance plans or payments to maintenance accounts where a liable owner has not contributed their share. The amount recovered can include administrative expenses and interest charged at a reasonable rate, from the date of the demand until the whole amount is paid. The local authority may allow repayment by instalments. A local authority cannot recover expenses of demolition where it has acquired the property under **section 40**.
85. Under **section 60**, an owner of a house or landlord subject to a work notice or repairing standard enforcement order may apply to the local authority or Private Rented Housing Committee for a certificate that work has been completed. If it is for the local authority to grant the certificate, it must do so if it is satisfied that the work has been completed and it has recovered any applicable expenses. Similarly, where the local authority has carried out work under **section 36**, no certificate can be issued until the expenses have been paid to the local authority. A Private Rented Housing Committee may also issue a certificate without an application, but only once the period for the work to be carried out has ended.
86. Each repairing standard enforcement order, modification or revocation of such an order and certificate of compliance with such an order, all issued by a Private Rented Housing Committee, must be registered in the land register by the Committee, as per **section 61**. Similarly, each maintenance order, maintenance plan and notice of revocation of a plan must be registered, but this time by the local authority. (An amendment to the Building (Scotland) Act 2003, in **schedule 6**, requires that work notices and demolition notices must be registered in the building standards register.)

87. **Section 62** covers the service of documents in relation to work notices, demolition notices, maintenance orders and local authority decisions on maintenance plans. These must be served on the owner and occupier of the house, the heritable creditor, a person who receives rent for the house and any other person appearing to have an interest in the house. Any notice under this section is not invalidated by failure to serve it on any of these persons, save the owner and occupier, if the local authority has taken the steps under **section 186** to establish who has an interest in the house.
88. **Section 63** deals with the date on which documents and decisions served or made under this Part of the Act come into effect. This is generally the date on which the notice is served. Where a repairing standard enforcement order, work notice, maintenance order or maintenance plan (or variation of a plan) is appealed, its effect is suspended until the appeal is decided. If the appeal is rejected or abandoned, it has effect from that point. A rent relief order or its revocation comes into effect 28 days after the last date on which the decision may be appealed or, if an appeal is made, 28 days after the date on which the appeal is rejected or abandoned. No work or action arising from a notice, order or plan may be done until the deadline for appealing the decision has passed or, if an appeal is made, the appeal has been finally determined. Where the sheriff's determination is final, the date on which an appeal is finally determined is the date on which the sheriff makes the determination. Where there may be a further appeal to the sheriff principal, the date on which an appeal is finally determined is either the last date on which such an appeal may be made or, where such an appeal is made, the date on which the appeal is abandoned or determined by the sheriff principal. When a sheriff has allowed a late appeal on cause shown (under **section 64(7)**), the last date when a decision may be appealed is to be construed according to the new date, but only where the change to the date is made before the original deadline for appeal.

## Appeals

89. **Section 64** provides for the terms of appeals against a work notice, a demolition notice, a local authority decision to carry out additional work, a demand for expenses for carrying out this work, a maintenance order, a maintenance plan or its variation or revocation, or a refusal to grant a certificate under **section 60** in relation to work required by a work notice. In these circumstances the person on whom the notice, demand or order is served may appeal to the sheriff within 21 days of service. Landlords and tenants can appeal to the sheriff against decisions of a Private Rented Housing Committee and a tenant can also appeal against a decision by the President of the Private Rented Housing Panel not to refer a complaint to a Committee. In each case the appeal must be made within 21 days of notification of the decision. A tenant can appeal within six months of a landlord's refusal of, or imposition of conditions on, consent to carry out adaptations under **section 52**. The sheriff may decide to hear a late appeal.
90. **Section 65** deals with the sheriff's determination of appeals. In the case of a work notice, a demolition notice, a local authority decision to carry out additional work, the demand for expenses for carrying out this work, a maintenance order, a maintenance plan or its variation or revocation, the sheriff may confirm or quash a decision, or make any other order the sheriff thinks just. In the case of an appeal by a landlord or tenant against a decision of the president of the Private Rented Housing Panel or of a Private Rented Housing Committee, the sheriff may confirm the decision or remit it, with reasons, for reconsideration by the president or Committee or quash it. In the case of a tenant's appeal against a landlord's refusal of, or imposition of conditions on, consent to carry out adaptations under **section 52(1)**, the sheriff may refuse the appeal or, as appropriate, direct the landlord to withdraw or vary the condition or to accept the tenant's application. If the Disability Rights Commission has issued a code of practice in relation to the exercise of the tenant's right to make adaptations in **section 52** or **53** of the Act, that code has to be taken into account by the sheriff when dealing with a case arising from that right. The sheriff's decision on appeals relating to work or demolition notices, a local authority's carrying out additional work in the course of carrying out work required by a work or demolition order, expenses charged by a local authority

for carrying out work required by a work or demolition order, or a refusal to grant a certificate under **section 60** in relation to work required by a work notice may be appealed to the sheriff principal, whose decision is final. The sheriff's decision on any other type of appeal is final.

91. **Section 66** deals with procedures for appeals. They are made by summary application to the court. Issues concerning additional works or expenses in relation to a work notice or repairing standard enforcement notice cannot be appealed if the points could have been raised in an appeal against the original notice or order.
92. **Section 67** gives Ministers powers to make regulations in relation to a tenant's appeal against a landlord's refusal of, or placing conditions on, consent for work under **section 52(2)**. Such regulations would change the appeal route from the sheriff to the Private Rented Housing Panel and could make necessary adjustments to the procedures of the Panel for dealing with such an appeal and to the procedures for any appeal from the Panel's decision to the sheriff court.

### **Chapter 9 – Interpretation**

93. **Section 68** defines a sub-standard house as one that fails the tolerable standard, is in a state of serious disrepair, or is in need of repair and, if nothing is done to repair it, is likely to deteriorate rapidly into a state of serious disrepair, or damage any other premises. The age, character, location and internal decorative repair are not to be taken into account. In Part 1, a house that fails the Tolerable Standard is considered as not being in a reasonable state of repair.
94. **Section 69** concerns non-residential premises. Work to implement a Housing Renewal Area action plan, a work notice or a maintenance plan can only be carried out on non-residential premises if they form part of a building containing a house and the works are required to implement an HRA action plan, bring a sub-standard house into a reasonable state of repair or secure the maintenance of a house that forms part of the same premises.
95. **Section 70** deals with the interpretation of terms in Part 1.