

HOUSING (SCOTLAND) ACT 2006

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 3 – Provision of Information on Sale of House

Duty to have or provide information about houses on the market

124. **Section 98** provides that a person who has responsibility for marketing a house that is on the market must possess prescribed documents in relation to the house. The duty to provide these documents is set out in **section 99**. The person marketing the house must comply with a request from a potential buyer for a copy of any or all of the prescribed documents, within a period to be set out in regulations. The duty does not apply if the person marketing the house believes that the person making the request is unlikely to have the means to buy the house, is not genuinely interested in buying the house, or is a person that the seller would not be likely to be prepared to sell the house to. This does not allow for unlawful discrimination and does not apply where the person marketing the house believes that the request is from an officer of an enforcement authority. A charge to cover the reasonable cost of making and sending a paper copy of the documents may be made. It is possible to provide electronic versions of the information, but the potential purchaser must consent in writing to this. There is no requirement on the person responsible for marketing the house to provide the documents if, between the request and the date by which the documents should have been provided, the house is sold, taken off the market, or for any other reason that person ceases to be responsible for marketing the house.
125. **Section 100** allows the person responsible for marketing the house to levy a reasonable charge under **section 99** and to specify terms in writing. These could include a restriction on the further circulation of the document without the seller's permission.
126. **Section 101** applies to anyone acting for the seller of a house, where the house is not being marketed, or is on the market but that particular agent is not responsible for marketing it. The agent must nonetheless possess the prescribed documents before informing people that the house is, or may become, available for sale.
127. **Section 102** defines the circumstances where a person is to be considered as acting as an agent. Essentially this means that, in the course of a business, they act on instructions from a seller of a house.
128. **Section 103** requires the person marketing the house to ensure the authenticity of copies of documents provided or shown to a potential buyer.

Prescribed documents

129. The information to be held and provided may be set out in regulations under **section 104**. Documents may be prescribed only if Ministers consider they contain information on the physical condition of the house, the value of the house, or other information that may be of interest to potential buyers. Regulations can make provisions about the form of documents, who can prepare them, and the period of validity of documents and how far

in advance of putting the house on the market they may be prepared. Regulations may also include a requirement for prescribed documents to be registered and may make provisions relating to the funding and operation of any register and enforcement of the requirement to register.

Exceptions from duty

130. **Section 105** gives the Scottish Ministers the power to make regulations exempting persons from the duty to hold and provide information and defining the circumstances or timescale where this exemption may apply.

Responsibility for marketing houses

131. **Section 106** states that only a seller or an agent may be responsible (for the purposes of the Act) for marketing a house. The agent and the seller cannot have the responsibility at the same time, and where there is an agent they will be the responsible person. Where there is an agent responsible for marketing the property, the seller must take reasonable steps to inform a potential buyer that they should ask the agent for the prescribed documents. This section also makes clear that a person can market the same house on more than one occasion.
132. The responsibility of a person acting as an agent is described in **section 107**. The person becomes responsible on taking steps that result in the house put on the market. They have the responsibility until the house is sold, taken off the market, they no longer act for the seller or they stop taking any action to market the house. The responsibility of a seller is set out in **section 108**. Where the seller does not have an agent and takes steps to put the house on the market, then they become responsible for the provision of information. This ceases when the house is sold, taken off the market or the seller stops taking any action to market the house. Actions taken on the seller's behalf by an agent are excluded.

Enforcement

133. **Section 109** states that local weights and measures authorities (which in Scotland are local authorities) have a duty to enforce this Part of the Act.
134. The powers of officers of enforcement authorities to require documents are set out in **section 110**. The enforcement officer may require a person they believe has a duty to provide prescribed documents to do so, in a legible form, and they may take copies of any document. They can only require this up to six months from the last day the person appeared to the enforcement officer to have a duty. Any request by an enforcement officer for a prescribed document must be complied with within seven days of the request. A request need not be complied with if there is a reasonable excuse for not doing so.
135. Where the enforcement officer believes that a person has breached the duty to provide information, or that the information provided was not authentic, the enforcement officer may give that person a penalty charge notice, under **section 111**. This must be within a period of not more than six months from when the breach was believed to have taken place. Provisions relating to penalty charges are set out in **schedule 3**. This states the information that must be included on the penalty charge notice, including provisions on the right to review. The penalty charge will be £500 or such other lesser amount specified by regulations and the period for paying the penalty charge will be 28 days from the service of the notice, but this may be extended by the enforcement authority. If the recipient of the charge requests a review, then the enforcement authority must consider representations and the circumstances of the case and decide whether to confirm or withdraw the notice. They must give notice of their decision to the recipient. The penalty charge must be withdrawn if the authority is satisfied that the recipient did not commit the breach of duty which resulted in the notice being served, the notice was not given within six months of the date that it appeared the duty was breached or that

the notice did not comply with the other requirements of **schedule 3**. The enforcement authority may also withdraw the penalty charge notice if it is satisfied that the recipient is unlikely to commit a further breach of the duty specified in the notice.

136. There is a right to appeal to the sheriff within 28 days of the enforcement authority review decision notice being served, although the sheriff can allow an appeal to be lodged after that date. The appeal must be on one of the grounds set out in **paragraph 5(4)** of **schedule 3**. The sheriff can either uphold or quash the notice. The sheriff's decision can be further appealed to the sheriff principal on a point of law.
137. The local authority can recover the penalty charge as a debt. Proceeding to recover the penalty charge can only start after the period for payment specified in the notice, after any appeal period or 28 days after any appeal determination or the appeal is withdrawn. Certification by the enforcement authority is sufficient evidence of non-payment. If the notice is withdrawn or quashed, any payment towards the charge should be refunded.
138. The Scottish Ministers can make regulations on the form of notices in this Part, circumstances where penalty charge notices may not be given, and methods by which penalty charges may be paid.
139. **Section 112** makes it an offence to obstruct an enforcement officer or to purport to be an enforcement officer, in relation to the powers to require documents or serve penalty notices. On summary conviction a person is liable to a fine not exceeding level 5 on the standard scale.

Duty to provide information to tenant exercising right to purchase

140. **Section 113** amends the Housing (Scotland) Act 1987 to give Ministers power to prescribe in regulations information to be supplied to tenants of local authorities and registered social landlords who request a house valuation in connection with the right to buy. This information may include estimates of costs of maintaining the house and any common parts; a statement of how long any common parts, fixtures and fittings and other items are expected to last, with estimated replacement costs; and any other matters of interest to a tenant who has served an application to purchase. Ministers may specify when prescribed information is to be provided only on the condition that the tenant pays a specified charge. The prescribed information that may be the subject of a charge does not include the valuation carried out to determine the value of the house for the purpose of determining the price to be paid.

Supplementary

141. **Section 114** gives the Scottish Ministers the power to give grants to fund development work in relation to the form, content, and terms of preparation of prescribed documents and to set conditions for the payment of grants.
142. **Section 115** establishes that the duty to provide prescribed information only applies where the house is sold with vacant possession. A house will be assumed to be available with vacant possession and the duties will apply, unless it is clear when the house is being marketed that there is not vacant possession.
143. **Section 116** addresses the situation where two or more houses in a sub-divided building are marketed as a single property. This is treated as the sale of a single house. As long as at least one of the houses is available with vacant possession, the prescribed documents must be provided.
144. If any person acting as the agent for the seller of a house commits a breach of duty under this Part of the Act, **section 117** allows the enforcement authority to notify the Office of Fair Trading and any other person or body with an interest in this breach. Where a fixed penalty notice is issued, the enforcement authority must inform the Office of Fair Trading of the penalty notice, the withdrawal of the notice and the result of any appeal against the notice.

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

145. **Section 118** defines possession of documents. A document is deemed to be possessed by a person if they do not have it, but can take immediate possession of the document (in the case of non-electronic documents) or in the case of electronic documents they are treated as being in possession if, using readily available equipment, the person can view and print a legible copy.
146. **Section 119** defines expressions for the purposes of this Part.