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

HOUSING (SCOTLAND) ACT 2006

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.

Part 2 – Scheme of Assistance for Housing Purposes

Provision of assistance for housing purposes

96. **Section 71** sets out the purposes for which local authorities may provide assistance for housing purposes. **Subsection (3)** gives examples of the forms of assistance that may be provided. Assistance may be provided on such terms as the local authority thinks fit, subject to the further provisions of Part 2 regarding grants or loans. **Subsection (5)** specifies the sections in this Part that do not apply when assistance is provided for the acquisition or sale of a house. The Scottish Ministers may make regulations about the procedures to be used, and the terms to be imposed, by local authorities in the provision of assistance.

97. **Section 72** requires a local authority to publish a statement of the criteria by which it decides whether to provide assistance and in what form. The statement must also set out any circumstances in which the local authority intends to cap the costs of work for which grant or loan is available, and the rate of interest or other charges on loans.

98. **Section 73** provides that a local authority must provide assistance to the owner of a house in relation to works required by a work notice, or works required to make a house suitable for a disabled person or to reinstate a house that has been so adapted. A local authority must also provide assistance to the owner of non-residential premises which are the subject of a work notice through the operation of **section 69**. Where works are to make the house suitable for a disabled person by the provision of standard amenities the assistance must be in the form of a grant. Standard amenities (toilet, bath or shower, wash-hand basin and sink) are defined in relation to the Tolerable Standard,

and the Scottish Ministers can vary the definition by referring to different parts of the Tolerable Standard. Ministers have powers, by means of regulations, to specify what assistance is provided for disabled adaptations, beyond the requirement that assistance for adaptations to give access to standard amenities must be in the form of grant. The powers could be used to prescribe, for example, the type of assistance that should be provided in connection with particular types of adaptation or when defined criteria about the applicant's circumstances are met. In particular they could be used to prescribe circumstances when grant must be provided.

99. **Subsection (5)** specifies that a local authority has carried out its duty under this section if it has invited the person to apply for a grant or loan, but they have not submitted a valid application or have failed to meet mandatory conditions.

Grants and loans

100. **Section 74** states that a person can obtain a grant or loan only if they make an application to the local authority. The application must include full details of the proposed work, including plans and specifications, the location of the work, an estimate of the cost of the work, and other information which may be required, particularly to carry out any financial assessment. If the applicant does not wish to apply for the full costs of the work, they may state the amount they are applying for. A local authority may require the applicant to provide information supporting the accuracy of the details in the application. The application will not be processed if such additional information is not provided.

101. **Section 75** gives the local authority discretion to approve or refuse an application for a grant or loan. If an application is approved, the local authority must work out the approved expense and, where application is made for a grant or subsidised loan, the applicant's contribution. The local authority may only approve an application for a grant or loan if it considers that the owners of all the land on which the work is to be carried out have given written consent to the application and to being bound by the conditions of grant or loan; the house will provide satisfactory housing accommodation for a reasonable time and meet reasonable standards of physical condition and amenities; and the work will not prevent the improvement of any other house in the same building. The local authority must not approve an application if the work has already begun, unless there were good reasons for starting the work early. A standard loan may only be given if the local authority is satisfied that the applicant would be unable to obtain a sufficient loan on reasonable and affordable terms from a legally authorised commercial lender. The local authority may require that the work is completed within a specified period, which must not be less than 12 months.

102. **Section 76** defines the approved expense in relation to the work referred to in an application for grant or loan. It is the amount that the local authority considers reasonable for the work it considers eligible for assistance, subject to any cap set out in the authority's statement of criteria. If the cost of work rises due to circumstances beyond the applicant's control, the authority may increase the approved expense. The Scottish Ministers may by order specify a maximum amount for the approved expense for a grant or loan. Local authorities may only exceed an amount so specified with the consent of Ministers. Local authorities may not limit the approved expense in the case of a grant to carry out works required to make a house suitable for a disabled person, whose only or main residence it is, or to reinstate a house that has been so adapted.

103. **Section 77** gives the Scottish Ministers power to make regulations for means-testing of grants and subsidised loans. Such regulations would set out a method for assessing an amount to be contributed by the applicant towards the approved expense. The assessment may take into account the financial circumstances of the applicant and their household or dependants, and any other criteria set by Ministers. The regulations may allow a local authority, with Ministers' consent, to reduce the applicant's contribution for different types of case.

104. **Section 78** establishes the procedure a local authority must follow if an applicant requests a review of their assessment.

105. **Section 79** deals with the amount of a grant or loan. The amount of a standard (unsubsidised) loan is the total of the approved expense. The amount of a subsidised loan is also the approved expense, but this is divided into an interest-free element and a repayment element. The amount of a grant, or of the interest-free element of a subsidised loan, is the greater amount of two options. The first is the approved expense minus the applicant's contribution, as calculated under **section 77**. The second, which applies in cases that the Scottish Ministers have specified in regulations, is a specified percentage of the approved expense, or a percentage set by the local authority with the consent of Ministers. A grant or loan calculated in the second way is called a "minimum percentage" grant or loan.

106. **Section 80** allows a local authority to set the terms for a standard loan or the repayment element of a subsidised loan, including provisions on interest (or other charges) and repayment. The local authority may not require repayment of the interest free element until the applicant to whom the loan is made disposes of an interest in the house by sale or otherwise, except by the grant of a standard security or a servitude or by means of a lease. An example could be on sale of the house. The local authority may require the loan and interest to be secured by a standard security over the house.

107. **Section 81** deals with notification of a local authority's decision on grant or loan applications. If the authority approves the application, it must inform the applicant of the approved expense, the applicant's contribution, the amount of the grant or loan (stating that this is a minimum percentage grant or loan, where appropriate), and the terms of the offer of loan (including interest and repayment terms) or grant. If the owner is a different person, the authority must inform the owner of the amount and terms of the loan or grant. Where a loan is offered, the notice must advise the applicant to obtain independent advice on its terms from a suitably qualified person. If the local authority refuses an application or sets the approved expense at an amount less than was applied for, it must provide the applicant with written notice of its reasons.

108. **Section 82** requires the local authority to pay a grant or loan either within one month of the date on which the local authority considers that the house is fit for occupation on completion of the relevant work, or by instalments while the work is being done, with a final instalment within one month of completion. Payment is subject to the local authority being satisfied with the standard of the work completed. No money may be paid on a secured loan before the standard security has been registered. If a grant is paid in instalments, the amount paid at any time must be in proportion with the grant percentage, for example, if the amount of grant is 75% of the approved expense, the total amount paid at any time must be no more than 75% of the cost of works completed up to that time. Where an instalment of grant or loan is paid before completion, and the work is not completed within 12 months of the date of that payment, the local authority may require repayment of the instalment and any subsequent instalments, along with interest from each date of payment. The local authority may set the rate of interest.

Grants and loans: conditions

109. **Section 83** sets conditions which must be complied with in respect of land or premises where work has been done with grant or loan assistance. The conditions apply from the date on which the local authority considers that the house is fit for occupation on completion of the relevant work. In the case of a grant, they end 10 years after that date. In the case of a subsidised loan, they end either 10 years after that date or when the repayment element of the loan and any interest or charge on it is fully repaid, whichever is later. In the case of a standard loan, the conditions cease to apply when the loan and any interest are fully repaid. The first three conditions are: a house to which the conditions apply must be used as a private dwelling (although part of it can be used for business); if it is occupied by the owner or a member of their family it must be their only

or main residence; and the property must be kept in good repair. Only this last condition applies to non-residential premises which have received grant. In addition the owner must, if required to do so, certify to the local authority that the relevant conditions are being met.

110. When a grant or loan is paid, the local authority must record a notice, in terms of **section 84**, in the appropriate land register, either the General Register of Sasines or the Land Register of Scotland. The notice must specify the conditions set out in **section 83**, the period for which they apply, and the provisions in **section 86** requiring the owner to repay the relevant amount if the conditions are not met. The costs of recording the notice are to be paid by the applicant to whom the grant or loan is paid.

111. **Section 85** allows the owner (or a creditor in a standard security with a right to sell) to discharge the conditions on a house resulting from a loan or grant by paying the local authority the sum that would be due if the conditions were breached. The conditions are also discharged when a local authority demands payment following a breach of any of them. In either of these cases, the local authority must register a further notice to specify that the conditions no longer apply. The owner of the house must pay the local authority the expenses of registering the notice. If a creditor in a standard security makes a payment to discharge the conditions, the sum concerned forms part of the amount secured by the standard security.

112. **Section 86** requires that, if any of the conditions in **section 83** are breached, the local authority must demand repayment from the owner of the house. However, if the authority believes that the breach can be remedied, it may allow time for this to be done. If the breach is remedied within the period set, the local authority may disregard it. If the authority considers that the breach cannot be remedied, but the owner was not responsible for it, it may disregard the breach. Either of these actions requires the consent of Ministers, who may approve conditions to apply to the suspension or disregard. The authority also has power to apply to the sheriff for an interdict to correct or forestall a breach of the conditions.

113. **Section 87** establishes how the sum to be paid to a local authority if conditions are breached is calculated. Where a grant was given, the amount is the whole grant plus interest on it. A standard loan has to be repaid in full, with the unpaid interest up to the date of repayment. Where a subsidised loan was given, the whole loan has to be repaid, plus unpaid interest on the repayment element up to the date of repayment, plus interest on the interest-free element up to that date.

Miscellaneous and supplementary

114. **Section 88** prevents a local authority from giving a further grant or subsidised loan for the same work for which a grant or subsidised loan has already been approved. It may give a standard loan for the same work, but the amount cannot exceed the approved expense minus the amount of the grant, i.e. the amount the applicant is required to pay. A local authority must not give a further grant or subsidised loan within 10 years of approving one for work on the same house, unless at least one of four conditions apply. These are that the additional work could not have been foreseen when the original application was approved; that the additional work could not have been carried out at the same time as the original work; that the additional work was not considered to be eligible for a grant or subsidised loan when the local authority approved the original application; or that the authority has invited an application for a further grant or loan under **section 90**.

115. **Section 89** makes it a criminal offence to give false information in an application for a grant or loan or in response to an authority's request for information to support the accuracy of an application. It is also an offence to fail to notify the authority of a change in circumstances affecting an application.

116. **Section 90** allows a local authority to invite an application for a further grant or subsidised loan, where an application for grant or loan has been made and the house requires the replacement of unsafe electrical wiring, installation of mains-powered smoke detectors or provision of adequate thermal insulation. For premises where any part is owned in common (for example, a tenement), this section also applies to the installation of a fire-resistant front door for each separate house or part of the premises, or a main door entry-phone system.

117. **Section 91** allows a local authority to make payments to a not for profit lender that provides loans to individuals for the purposes of work or the acquisition or sale of a house that is eligible for local authority assistance. This could allow the authority to contribute to the loan fund or subsidise administrative costs of a non-profit lender working across authority areas, as an alternative to making standard loans itself. The terms on which the local authority makes payments to the lender may include restrictions on the terms of loans made to individuals. Ministers may make regulations to change the definition of relevant lenders, or to control the terms of payments to them and to individuals.

Special cases

118. **Section 92** provides that there are only three situations in which a tenant is eligible for a grant or loan. The first is if the relevant work has been the responsibility of the tenant under the lease for at least two years. The second is if the work is to make the house suitable for a disabled person or to reinstate a house that has been so adapted. The third is when the work is urgently required to protect the health and safety of the occupants of the house, including repair work and the provision of fire safety measures.

119. **Section 93** modifies this Part of the Act in relation to agricultural tenants and crofters, whose tenancies include provision for compensation to be paid at the end of the tenancy for any improvements carried out by the tenant. Such a tenant is to be treated as the owner of the house for the purposes of this Part. Where compensation becomes due, under the Crofters (Scotland) Act 1993 or the Small Landholders (Scotland) Acts 1886 to 1931, during the period when conditions apply to the house resulting from a grant or loan, a deduction is made from the compensation to take account of the contribution made by the grant or loan. Provision for similar deductions from compensation was inserted in the Agricultural Holdings (Scotland) Act 1991 by the Agricultural Holdings (Scotland) Act 2003.

Supplementary

120. **Section 94** allows Ministers to give local authorities generally, or a particular authority, directions on the giving of assistance. Such directions may not relate to the provision of assistance to a particular person or in relation to particular premises. Local authorities must have regard to guidance issued by Ministers on their functions under this Part.

121. **Section 95** gives local authorities powers to improve the amenity of residential areas, for example by improving paths and waste ground. A local authority may carry out work on its own land, assist work on land not owned by it, carry out work on land with the agreement of its owner, and acquire land by agreement. There is also a power of compulsory purchase, which requires authorisation by Ministers. Assistance for such works may be on such terms and conditions as the local authority thinks fit, and is not constrained by the provisions on grants and loans for work to houses.

122. **Section 96** extends to the Scottish Ministers the powers and functions given to local authorities in relation to grants and loans in this Part.

123. **Section 97** provides the interpretation of terms used in this Part.

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.

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.

Part 4– Tenancy Deposits

147. **Section 120** defines “tenancy deposit” and “tenancy deposit scheme” for the purpose of this Part.

148. **Section 121** provides Ministers with a power to make regulations which would set out the conditions a tenancy deposit scheme must meet before they can approve

it. Such regulations may make further provision about tenancy deposit schemes as Ministers think fit. **Subsection (2)** lists issues which the regulations might cover, but **subsection (3)** prevents Ministers from using these regulations to introduce a requirement that a deposit be sought for all tenancies or occupancy arrangements and also prevents them from creating new criminal offences relating to tenancy deposits.

149. **Section 122** gives Ministers a power to approve a tenancy deposit scheme, which may be devised by themselves or any other person. The regulations made under **section 121** must be in force before Ministers can approve any scheme and such approval must be in accordance with the conditions contained in those regulations. Before approving a scheme, Ministers must publicise the terms of the scheme in any way they think fit and consult landlord and tenant representative bodies and any other persons as they consider appropriate. **Subsection (4)** obliges Ministers to review each scheme from time to time and gives them power, once they have done so, to ensure that any scheme is revised. Ministers can also withdraw their approval of any scheme following a review. **Subsections (1)** to **(4)** apply to new schemes or schemes which have been subjected to a review. This means that during a review of a scheme, Ministers must also follow the publicising and consultation obligations in **subsection (3),** except where they think that the review is unlikely to have a significant adverse affect on anyone. **Subsection (6)** provides that Ministers can approve different schemes for different type of tenancy or occupancy arrangement or more than one scheme for the same type of tenancy or occupancy arrangement.

150. Section 90(3) of the Rent (Scotland) Act 1984 declares that a tenancy deposit is not to be treated as a premium, but is given as security for a tenant's obligations for utility accounts, damage and so on. This list does not include 'rent'. **Section 123** inserts 'rent' as a further ground for which a deposit can be held as security.

Part 5 – Licensing of Houses in Multiple Occupation

Introductory

151. **Section 124** requires every house in multiple occupation (HMO) that is not exempted to be licensed. A licence for an HMO authorises its holder and any agent named on the licence to allow the HMO to be occupied in accordance with the licence conditions.

Meaning of "house in multiple occupation"

152. An HMO is defined in **section 125**. The first requirement is that it is living accommodation occupied by three or more people, who are members of more than two families. The second is that those people share a house, or in other accommodation are required to share a toilet, personal washing facilities or facilities for the preparation or provision of cooked food. "Living accommodation" may include accommodation where the shared facilities are in different buildings, for example where there is a central refectory for several blocks. People count as occupants only if the accommodation is their only or main residence. However, accommodation occupied by a student during term time is regarded as that person's only or main residence. Patients in hospital are not counted as occupants of the hospital.

153. **Section 126** sets out seven types of exemption from the licensing requirement. The first relates to owner occupiers. An HMO is exempted if it is occupied only by the owners, members of their families, and any other persons who are not related to the owners and are members of no more than two other families. The second exemption applies where the HMO is provided as part of a service registered in certain categories under Part 1 of the Regulation of Care (Scotland) Act 2001. This excludes those categories of care accommodation where the Care Commission is responsible for inspecting the property as well as the service. The third exempts forces accommodation, and the fourth exempts prisons and related institutions. The fifth exemption is where the occupants are members of a religious order, mainly occupied in prayer, contemplation, education or

the relief of suffering, plus no more than two people who are not members of the order. The sixth exemption is where the landlord's rights and duties have been transferred to a local authority under section 74 of the Antisocial Behaviour etc (Scotland) Act 2004, in order that the local authority can take steps to prevent antisocial behaviour by the tenants. The final exemption is where the HMO is owned by a small housing co-operative. This removes an anomaly where, if a group of people own the house they occupy jointly, they are exempt from licensing, but if they form a corporate body which owns the house, they would otherwise require to be licensed. Ministers can by order add, remove or vary the descriptions of categories of HMOs which are to be exempt.

154. **Section 127** allows Ministers to define by order specified types of HMOs which can be exempted from licensing by a local authority, on a discretionary basis. This would allow individual local authorities to continue licensing certain types of HMO if there was a particular problem with that type of HMO in particular areas.

155. **Section 128** defines the meaning of "related" for the purposes of HMO licensing. The definition includes married, unmarried and same-sex couples, and stepchildren and foster children, as well as blood relatives.

Application for HMO licence

156. **Section 129** and **schedule 4** describe the procedure for applying for an HMO licence. The schedule specifies the information to be contained in an application for a licence. It provides a detailed description of the requirement to give public notification of an application, including provisions to limit notification where it could put people at risk, for example for women's refuges. It sets out how people can make written representations about the application, the local authority's powers to make inquiries about the application, and the applicant's right to see and respond to written representations and the local authority's report on any inquiries it has made. The applicant and others may also be invited to make representations about the application at a hearing. In considering the application, the authority must take into account valid written representations, the report of its own inquiries, written responses from the applicant and oral representations at the hearing. It may consider late written representations if satisfied that it was reasonable for the deadline for representations to be exceeded.

157. The authority must decide whether to grant or refuse an application within 12 months of its receipt. It may apply to the sheriff for an extension to this period. If a decision is not made within the requisite period, the licence is granted unconditionally.

158. Under **section 130**, the authority must refuse an application if the applicant or their agent is disqualified by court order from holding an HMO licence or the authority considers either of them to be not a fit and proper person. The factors to which the local authority must have regard in determining whether the applicant and agent are "fit and proper" are as in the Antisocial Behaviour etc (Scotland) Act 2004. Where an applicant or agent is not an individual, these tests apply to any director, partner or other person involved in the management of the company, trust or organisation.

159. **Section 131** states that an authority may only grant a licence if the accommodation is suitable for use as an HMO or could be made so by including conditions in the licence. The criteria that an authority must consider are given.

160. **Section 132** prevents an authority from considering an application from the same applicant for the same accommodation, or for any accommodation if refusal was on the grounds of the applicant not being a fit and proper person, within a year of refusal of an application. This restriction does not apply if the local authority is satisfied that there has been a material change of circumstances, for example if a physical feature which made the property unsuitable for licensing has been altered.

Terms of HMO licence

161. **Section 133** deals with the conditions contained in licences. A local authority may include any conditions that it considers appropriate. The Scottish Ministers may also specify in regulations conditions which must be included. Conditions can include dates by which they come into effect. A condition requiring work to be carried out to the property must not come into effect sooner than the local authority reasonably considers the work can be completed.

162. **Section 134** states that an HMO licence lasts for three years, or a shorter period which cannot be less than six months. It starts on the date when notice of the decision to grant the licence is served on the owner, or another date specified in the licence. If anyone has made a representation about the licence application, time is allowed for an appeal to be brought before the licence comes into force. In the case of a licence granted because a local authority did not come to a decision within the period required, the licence will last for one year from the end of that period.

163. **Section 135** deals with the expiry date of an HMO licence when an application is made for a new licence for the same HMO before the existing licence has expired. If the new licence is granted, the existing one expires when that comes into effect. If the new licence is refused, the existing licence expires on the latest of three dates. These are the last date on which an appeal may be made against refusal, the date on which an appeal is abandoned or finally refused, and the date on which the existing licence would have expired under its original terms.

164. **Section 136** states that an existing HMO licence transfers to the new owner of a licensed property and lasts for one month from the date of purchase, provided that the new owner is already entered on the local authority's register of landlords. If the new owner submits a licence application before the end of that month, the licence will continue in force until that application is determined, as for renewals. If the new owner is not a registered landlord, the licence expires on the date that ownership transfers.

165. **Section 137** transfers the licence of a deceased sole licence-holder to that person's executor. The licence expires three months after the date of death, unless the authority is satisfied that it is reasonable to extend it in order to wind up the holder's estate.

Variation and revocation of HMO licence

166. **Section 138** sets out the procedure for varying a licence, which a local authority may do for its own reasons or at the request of the licence holder. If the local authority proposes the variation, it must give its reasons. The variation process does not permit the period of the licence to be shortened. The authority must consider oral representations at a hearing before deciding whether to vary the licence. The variation comes into force on a date calculated in the same way as for the start of a licence.

167. **Section 139** allows a local authority to revoke a licence at any time. The three possible grounds are that the licence holder or agent is no longer a suitable person under **section 130**; that the accommodation is no longer suitable for use as an HMO and cannot be made suitable; or that a condition of the licence has been breached. The authority must consider oral representations at a hearing before deciding whether to revoke the licence. A revocation comes into force on the date by which the decision to revoke the licence may be appealed, or on the date when such an appeal is finally abandoned or determined other than by quashing the decision to revoke.

Delivery and cancellation of HMO licence

168. **Section 140** makes clear that the local authority must send the licence to the licence holder with any notification that the licence is being granted or varied. A licence holder is also entitled to be given a certified copy of the licence, on any reasonable request.

169. **Section 141** allows a licence holder to cancel the licence at any time by returning it to the local authority.

Temporary exemptions

170. **Section 142** allows a local authority to grant a temporary exemption order if the owner of an unlicensed HMO that requires to be licensed applies. The owner must explain the steps to be taken to stop the premises from being an HMO, and the local authority must be satisfied that these steps will be successful. The HMO does not need a licence during the term of the order, which is three months unless extended in exceptional circumstances. Under **section 143**, the order may require the owner to carry out work to improve the safety or security of the occupants for the duration of the order. This could include minor works or the provision of removable equipment where licence conditions would normally require permanent, fixed items.

Enforcement by local authority

171. **Section 144** gives a local authority power to order that no rent or other payments are due from occupants of an HMO under any tenancy or occupancy arrangement. This may be done if a licensable HMO is not licensed or a condition in a licence has been breached. Procedures for notification and revocation are set out. An order does not affect any other terms of the tenancy or occupancy arrangement. Rent and other sums not paid while the order has effect do not become payable subsequently.

172. Under **section 145** a local authority can serve a notice on a licence holder requiring action to be taken to rectify or prevent a breach of a condition in an HMO licence. While such a notice is in force, no new occupiers should be permitted to move in. Such action would result in an offence being committed (**section 154(2)(b)** and **(4)(b)**). Existing occupiers will be notified of the requirement (**section 158(7)**).

173. **Sections 146** to **150** and **schedule 5** make arrangements about HMO amenity notices. Such a notice can be served on any living accommodation which the local authority believes to be an HMO which requires to be licensed, and which the local authority considers is not reasonably fit for occupation by the number of persons occupying it. **Section 147** sets out the issues the local authority must have regard to in deciding whether the accommodation is reasonably fit for occupation. By serving an HMO amenity notice the local authority may require the owner to carry out work to make the accommodation reasonably fit for occupation. The notice must specify the work to be carried out and the period in which it must be done (not less than 21 days), and may specify particular steps to be taken in carrying out the work. An HMO amenity notice may not require the owner to take any fire safety measures within the meaning of the Fire (Scotland) Act 2005, since enforcing such matters is the responsibility of the Fire and Rescue Service.

174. **Section 148** provides that the local authority may revoke the HMO amenity notice if the living accommodation is demolished or the work is no longer considered necessary. **Section 149** allows the authority to extend the period for the work to be carried out, if it considers that it will be completed within a satisfactory period.

175. **Schedule 5** sets out arrangements for enforcement of HMO amenity notices. If the owner fails to comply with the notice, the local authority may carry out the work and recover its costs. Before carrying out any work on a listed building, the authority must consult appropriate bodies. If the authority proposes to do the work but considers that doing so is likely to endanger occupiers, it can require them to move out, and can if necessary obtain a warrant for ejection. It is an offence for any person to move into any land or premises from which occupiers have been required to move. The authority must grant a certificate of completion that the work has been carried out, if requested. The local authority must record HMO amenity notices in the Building Standards Register, or keep a written record if the HMO is not a building.

176. **Section 151** allows the local authority to carry out work required by an HMO amenity notice, or arrange for it to be carried out, by agreement with the owner and at the owner's expense.

177. **Section 152** applies where an occupier moves from a house to allow work required by an HMO amenity notice, 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.

178. **Section 153** deals with people who are authorised or entitled to do anything under an HMO amenity notice. 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 does not apply to any rights conferred by Part 9.

Offences etc.

179. **Section 154** lists the criminal offences relating to HMO licensing. An owner of a licensable HMO without a licence is committing an offence (unless the owner has a reasonable excuse). It is also an offence to claim that an HMO licence that has ceased to have effect is valid. A licence holder commits an offence by using an agent not specified on the licence, breaching a condition in a licence or allowing an HMO to be occupied in contravention of a requirement under **section 145(2)**. An agent commits an offence if he or she acts for a licence-holder without being named on that licence, causes a condition of the licence to be breached, or does anything which permits or facilitates occupation of a licensable HMO that either does not have a licence or is occupied in contravention of a requirement under **section 145(2)**. It is an offence to prevent or obstruct any person exercising powers of entry under **section 181(1)(e)**. **Section 155** defines circumstances in which offences are not committed, or where there is a defence of reasonable excuse. **Section 156** sets penalties for these offences.

180. **Section 157** gives a court powers to revoke an HMO licence and disqualify an owner from holding a licence, or an agent from being named on a licence, for a period not exceeding five years. These powers can be used on conviction of an offence under **section 154**. A person other than the owner of the HMO or agent, who is convicted of preventing or obstructing an officer from exercising a power of entry, cannot be disqualified (but any such conviction would be taken into account if they subsequently applied for an HMO licence).

Local authority decisions: notice and appeals

181. **Section 158** sets out the procedures for the service of notice of decisions on HMO licensing made by local authorities. Such notices must give the local authority's reasons for its decision, and set out the effect of the decision, when it comes into effect, and the arrangements for appeal. **Section 159** deals with procedures for appeals against the decisions referred to in **section 158**. Any person on whom the local authority is required to serve notice of a decision has the right to appeal against the decision to the sheriff. They must do so within 28 days, although the sheriff may decide to hear a late appeal. The sheriff may confirm, vary or quash the decision of the local authority, or (except for a decision to make an HMO amenity notice) may remit it back to the authority for reconsideration. The sheriff's decision may be appealed to the sheriff principal. The decision of the sheriff principal is final.

General and supplementary

182. **Section 160** requires a local authority to keep an HMO register containing details of each application for an HMO licence, the decision made on the application and subsequent progress of the licence. The register is to be publicly available, but the local authority must exclude any information that it considers could put any person or premises at risk.

183. **Section 161** entitles local authorities to charge fees for an application for a licence and for issuing a certified copy of a licence or of an entry in the HMO register. The Scottish Ministers may make regulations about fees, including maximum amounts to be charged, how fees are to be calculated, and circumstances in which no fee is to be payable, or in which fees are to be refunded.

184. **Section 162** allows Ministers to make payments to local authorities to enable or assist them to exercise their functions in connection with HMO licensing.

185. Under **section 163**, a local authority must have regard to guidance issued by Ministers about the exercise of its HMO licensing functions.

186. **Section 164** deals with the situation where an HMO is owned jointly by more than one person. The application for a licence may be made by one owner or jointly by more than one. Any joint licence holders can request to be removed from the licence at any time, provided one owner continues to hold the licence.

187. **Section 165** requires that any notice served on an applicant or licence holder must be copied to any specified agent of that owner. Unlike notifications under **section 158**, the provision of a copy of the notice to any agent does not entitle the agent to make representations or appeal decisions on his or her own behalf, but only on behalf of the applicant or licence holder.

188. **Section 166** provides definitions of terms used in this Part.

Part 6– Mobile Homes

189. **Section 167** amends section 1 of the Mobile Homes Act 1983 by substituting a new section. The effect of this is to require the owner of a protected site to give a proposed occupier of a mobile home on the site a written statement before an agreement on letting a stance is made. The contents of the statement are specified. If the owner is selling the mobile home, the statement must be given not later than 28 days before the date of either the agreement on letting the stance or the agreement for the sale of the mobile home, whichever is earlier. Otherwise, the statement must be given not later than 28 days before the date of the agreement on letting the stance. The proposed occupier may consent in writing to the statement being given by a later date. Any express term not set out in the written statement is unenforceable. If the owner fails to provide the statement, the occupier may apply for a court order requiring this to be done.

190. **Section 168** amends section 2 of the 1983 Act to provide that, if the written statement is given to the occupier after the date of the agreement, the period of six months, during which either party can apply to the court to vary or delete any express term in the agreement, runs from the date on which the statement is given, rather than the date of the agreement.

191. **Section 169** amends Part 1 of Schedule 1 to the 1983 Act. The effect is that the owner may ask the court to terminate the agreement because the condition of the mobile home has a detrimental effect on the site (but not because of its age). The court may give the occupier the chance to carry out repairs on the mobile home, if it would be reasonably practicable thus to rectify the detrimental effect and if the occupier states the intention of carrying out the repairs. A further amendment gives an owner 28 days in which to decide and notify the occupier whether a person to whom the occupier wishes to sell the mobile home and assign the stance let is approved.

192. **Section 170** amends section 2A of the 1983 Act to give Ministers power to amend by order the implied terms set out in the 1983 Act. Such amendments can affect existing agreements only on the first use of the power. Subsequent orders can only affect agreements made on or after the date of the coming into force of the order.

193. **Section 171** amends the Caravan Sites Act 1968 (as amended by the Housing Act 2004) to define it as an offence when a person interferes with the peace or comfort of the occupier and persons living with the occupier or persistently withdraws or withholds required services or facilities, knowing, or having reasonable cause to believe, that the action will cause the occupier to leave or to give up relevant rights. The section also amends that Act to remove a reference to regional councils in Scotland as they no longer exist.

Part 7 – Repayment Charges

194. Under **section 59(1)** or **(2)** or **paragraph 6(1)** of **schedule 5**, a local authority is entitled to recover certain expenses and payments, including interest and administrative expenses. **Section 172** gives a local authority in that position power to recover sums by registering a charge (called a repayment charge) in the property registers in respect of the relevant living accommodation or, in the case of a demolished house, of its site. The amount that can be recovered by a repayment charge (called the repayable amount) is the lowest of three sums: the amount that is recoverable under **section 59(1)** or **(2)** or **paragraph 6(1)** of **schedule 5**; or a lower amount set by the local authority; or any maximum amount that is prescribed by Ministers by order. The repayable amount is due to be paid in 30 equal annual instalments, but it may be redeemed at any time by a payment to the local authority of an agreed sum or, if agreement cannot be reached, a sum decided by Ministers. The local authority must register a repayment charge and its discharge (when the repayable amount is fully repaid or redeemed early) in the appropriate land register. A repayment charge may not be registered against living accommodation which is not a building or used to recover money due under **section 59(2)** from a landlord who does not own the relevant living accommodation.

195. **Section 173** provides that a registered repayment charge is proof that a charge exists on the living accommodation to which it refers and a registered discharge is proof that the charge has been discharged. A registered repayment charge has priority over all future burdens and incumbrances on the living accommodation and all existing ones, with some specified exceptions relating to statutory provisions. The local authority can enforce a registered repayment charge against any owner of the living accommodation, except someone who acquires right to the property in good faith and for value before registration has taken place and anyone who derives title from such a person.

196. **Section 174** gives Ministers power by order to specify the form of a repayment charge or discharge and to make further provision about the repayment or early redemption of amounts repayable under a repayment charge.

Part 8 – Miscellaneous

197. **Section 175** amends the Antisocial Behaviour etc. (Scotland) Act 2004. These amendments give Ministers powers to issue a Letting Code, which is a code of practice on standards of management for landlords and their agents. Ministers must first assess existing arrangements relating to standards of management and consult relevant persons on the Code. Any such Code would have to be considered by a local authority when deciding whether someone is a fit and proper person to be a landlord. The local authority will also have to take into account the fact and nature of any agreement that the landlord has with an agent in connection with the letting of the house, when deciding whether the landlord (but not the agent) is a fit and proper person.

198. **Section 176** makes further amendments to the Antisocial Behaviour etc. (Scotland) Act 2004. The reference to unlawful discrimination as part of the fit and proper person test is altered so that it relates to all current forms of unlawful discrimination, rather than

specific forms. A local authority is required to include in the register of landlords the fact that a house is subject to a repairing standard enforcement order and to remove the reference when the order is revoked or the work completed. This corresponds to the period during which it is illegal for the landlord to re-let the house without the consent of a private rented housing committee. Public access to information contained in a local authority's register of private landlords is controlled, so that the access is geared to the purposes for making that information available to the public and does not support other undesirable purposes such as trawling the internet-based register. Another amendment prevents an abuse by ensuring that a person whose application is refused cannot re-apply immediately and thus let lawfully while the new application is considered. Only the owner and the immediate landlord of the occupier are to be subject to the fit and proper person test. An agent of the immediate landlord would also be subject to the test, but not intermediate landlords.

199. **Section 177** inserts a new section 68A into the Housing (Scotland) Act 2001. The new section provides that Ministers have a power to direct a registered social landlord (RSL) to authorise another RSL to exercise any of its housing management functions. The delegating RSL must have had an interest in land transferred to it from a local authority before this new section came into force and the local authority must no longer have a duty to maintain a housing revenue account (ie, no longer have council housing stock). Ministers must be satisfied that the direction is appropriate to meet the spirit of the proposals put to tenants before the stock transfer. Use of the power is time-limited to five years from commencement of the provision.

200. **Section 178** amends section 58(3) of the Housing (Scotland) Act 2001 to make clear that RSLs may undertake a broad range of activities to improve the economic, social and environmental circumstances of the communities within which they operate and that such activities may benefit both the RSLs' residents and other people.

201. **Section 179** places a requirement on Ministers to publish a strategy for improving energy efficiency in living accommodation (defined in **section 194** as "any place which is, or which is capable of being, occupied for the purposes of human habitation"). This strategy may be published as part of a general strategy for improving energy efficiency. It may include measures that would improve the energy efficiency of living accommodation and an assessment of the reduction in carbon dioxide emissions that would result from them. Ministers are required to review the strategy and to report on progress at least every five years.

202. **Section 180** amends the Housing (Scotland) Act 1988 to allow a landlord to seek possession, on grounds of antisocial behaviour, of a house let under a contractual assured tenancy, even though the tenancy agreement does not provide that possession could be sought on those grounds.

Part 9 – Rights of Entry

203. **Section 181** sets out powers of entry. Any person authorised by the local authority may enter premises in connection with decisions relating to the designation of a Housing Renewal Area; determining whether to serve a work or demolition notice or whether the requirements under an existing notice have been complied with; carrying out work or demolition that the local authority is required or authorised to do; maintenance orders and plans; and HMO licences and requirements associated with them and with HMO amenity notices. A member of a Private Rented Housing Committee or person authorised by them is entitled to enter a house in respect of which an application has been referred to the Committee. The owner of any house may, at any reasonable time, enter the house to do any work required by a work notice, demolition notice or maintenance plan. This is particularly important where the owner lets out the house. A landlord has a right of entry to view the condition of the house and carry out work to meet the repairing standard.

204. **Section 182** outlines circumstances where a sheriff or justice of the peace may issue a warrant to allow a person authorised by a local authority, or Private Rented Housing Committee, to enter a house, by force if necessary, for the purposes described in **section 181**. A warrant can only be issued where the sheriff or justice is satisfied that the entry is reasonable and that entry has been refused, or is expected to be refused; the land or house is empty; the owner is temporarily absent; the matter is urgent; or that asking for access to the house would have defeated the purpose of gaining entry. Except in the last two of these cases, the sheriff must also be satisfied that the local authority has served on the owner a notice that it intends to apply for a warrant.

205. **Section 183** provides a right of entry for constables to enter land or premises where there is a reasonable belief certain offences are being committed, to seek evidence of those offences. There is also an ability to apply for a warrant from a sheriff or justice of the peace in these circumstances.

206. **Section 184** contains additional details of the rights of entry. The right of entry allows access to adjacent land or premises. Along with the right of entry goes the entitlement to survey and examine and do anything else necessary for the purpose for which entry is authorised. Where a person exercises the rights of entry, they are entitled to bring other persons or equipment as necessary. Access should be at reasonable times and in most situations at least 24 hours notice given. The land or premises must be left secure and compensation is due if any damage has occurred as a result of the entry or failure to secure the premises. Disputed compensation will be settled by arbitration.

Part 10 – General and Supplementary

207. **Section 185** places a duty on Ministers and local authorities to perform any functions that they are required or empowered to carry out under the Act in such a way as to promote equal opportunities and compliance with equal opportunity requirements

208. **Section 186** details powers for a local authority to obtain information to enable or assist it to carry out its functions under the Act. This information can be obtained from various specified persons. The local authority can serve a notice on such a person requiring him or her to state in writing the nature of the person's interest in the house or premises and the name and address of any other person with an interest, and to provide any other information about the house or premises. This is with a view to allowing the local authority to serve notices as required or otherwise to carry out its functions. It can also require any occupier to disclose the nature of their relationship with any other occupier, where that information is required to determine whether the accommodation is an HMO that requires to be licensed. Any person who is asked to provide such information and refuses or fails to do so, knowingly gives false or misleading information, or recklessly makes a false or misleading statement in respect of information, is guilty of an offence with a fine on summary conviction not exceeding level 2 on the standard scale. There is no requirement to disclose information if that would make the person liable under law to any sanction or other remedy.

209. **Section 187** deals with formal communications. A formal communication is any notice, notification, direction, consent, order, licence, application (other than to a court) or decision that is served, given or made under the Act or for the purposes of the Act. There is provision about how such communications are to be made and served.

210. **Section 188** gives Ministers powers to make regulations setting out the form and content of any formal communication.

211. **Section 189** sets out the position where an offence is carried out by a body corporate, a Scottish partnership or an unincorporated association. Where the offence arises from an act (or any neglect) of a defined officer of these bodies, the individual is also guilty of an offence.

212. **Section 190** gives the Scottish Ministers the power to make incidental, consequential, transitional, or saving provisions. **Section 191** contains provisions on the making and approval of orders and regulations arising from this Act.

213. **Section 192**, **schedule 6** and **schedule 7** deal with repeals, revocations and modifications. **Section 193** deals with Crown application. **Section 194** defines terms used in the Act and **section 195** sets out commencement provisions. The table below is a graphic representation of some of the definitions in **section 194**.