

HOUSING (SCOTLAND) ACT 2006

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 1 – Housing Standards

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.

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

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.