

HOUSING (SCOTLAND) ACT 2006

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 1 – Housing Standards

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.