

HOUSING (SCOTLAND) ACT 2006

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 1 – Housing Standards

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.