



Housing (Scotland) Act 2006

2006 asp 1

PART 1

HOUSING STANDARDS

CHAPTER 5

REPAIR, IMPROVEMENT AND DEMOLITION OF HOUSES

Enforcement by local authority

35 Carrying out of work or demolitions by local authority

- (1) If the owner of a house fails to comply with a work notice or a demolition notice, the local authority may carry out—
- (a) the work or the demolition required by the notice, and
 - (b) any other work which, in the course of carrying out work or demolition authorised by paragraph (a), the local authority finds to be required for the purposes of—
 - (i) implementing an HRA action plan in relation to any house identified in it, or
 - (ii) bringing any house which the local authority considers to be sub-standard (whether or not situated in an HRA) into, and keeping it in, a reasonable state of repair,but which it could not reasonably have known to be so required before it served the work notice or demolition notice.
- (2) The local authority may not carry out any work authorised by subsection (1)(a) unless—
- (a) the period within which the work or demolition requires to be carried out has ended, or
 - (b) the owner has given notice to the local authority—
 - (i) of being unable to comply with the work notice or demolition notice because of a lack of necessary rights (of access or otherwise) despite

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- having taken reasonable steps for the purposes of acquiring those rights, or
- (ii) stating that the owner considers that carrying out the work or demolition required is likely to endanger any person.
- (3) Before carrying out any work authorised by subsection (1)(b) the local authority must give 21 days' notice of its intention to do so in accordance with section 62.
- (4) The requirement to give notice under subsection (3) does not apply if the local authority considers—
- (a) that the situation is urgent, or
 - (b) that it would otherwise be impractical to carry out work authorised by subsection (1)(a) before carrying out any work authorised by subsection (1)(b).

Commencement Information

II S. 35 in force at 1.4.2009 by [S.S.I. 2009/122](#), [art. 3](#)

36 Carrying out of work by local authority: repairing standard

- (1) Where [^{F1}the First-tier Tribunal] notifies the local authority that a landlord—
- (a) is unable to comply with the duty imposed by section 14(1)(b), or
 - (b) has failed, or is unable, to comply with a repairing standard enforcement order,
- the local authority may carry out the work specified in subsection (2).
- (2) That work is—
- (a) the work needed to bring the house concerned up to the repairing standard or, as the case may be, the work required by the repairing standard enforcement order, and
 - (b) any other work which, in the course of carrying out work required by the order, the local authority finds to be required for the purposes of enabling the work required by the order to be carried out.
- (3) Before carrying out any work authorised by subsection (1) the local authority must give 21 days' notice of its intention to do so to the landlord and the tenant under the tenancy to which the order relates.
- (4) The requirement to give notice under subsection (3) does not apply if the local authority considers—
- (a) that the situation is urgent, or
 - (b) in the case of work falling within subsection (2)(b), that it would otherwise be impractical to carry out any other work in respect of which notice has been given under subsection (3) before carrying out the work in question.

Textual Amendments

F1 Words in s. 36(1) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Private Rented Housing Committees\) Regulations 2016 \(S.S.I. 2016/337\)](#), reg. 1(2), [sch. 2 para. 6\(10\)](#) (with [sch. 1](#))

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37 Evacuation

- (1) Where the local authority—
 - (a) is required or authorised by or under this Chapter to carry out work in, or to demolish, a house, and
 - (b) considers that doing so is likely to endanger the occupant of any land or premises,it must require that occupant to move from the land or premises.
- (2) A requirement under subsection (1) must be made by serving a notice on the occupant specifying—
 - (a) by reference to the work or demolition which the local authority is required or authorised to carry out, the reason why the occupant is required to move, and
 - (b) the period, beginning not less than 14 days after the date on which the notice is served, within which the occupant must move.
- (3) A requirement under subsection (1) ceases to have effect if—
 - (a) the sheriff refuses to grant a warrant under section 38(4) in relation to it, or
 - (b) the work or demolition concerned is completed.

38 Warrants for ejection

- (1) Where an occupant has not complied with a requirement under section 37(1), the local authority may, by summary application, apply to the sheriff for a warrant for the ejection of the occupant from the land or premises in question.
- (2) No such application may be made before the expiry of the period specified in the notice served under section 37(2).
- (3) On such an application, the sheriff may require the service of a further notice on the occupant.
- (4) The sheriff may, if satisfied that the occupant is likely to be endangered by the carrying out of the work or demolition concerned, grant a warrant of ejection requiring the occupant to move from the land or premises in question, within such period as the sheriff may determine, until the work or demolition is completed.
- (5) Such a warrant—
 - (a) may be made subject to such other conditions (including conditions with respect to payment of rent) as the sheriff thinks just and equitable, but
 - (b) where a further notice is served under subsection (3), may not require the occupant to move before the day which is 14 days after service of that notice.
- (6) No such warrant may require a person to move from any living accommodation which is that person's only or main residence unless the sheriff is satisfied that suitable alternative living accommodation on reasonable terms will be available to that person.
- (7) The reference in subsection (6) to suitable alternative living accommodation is a reference to living accommodation which is suitable for occupation by the resident and any other person whose only or main residence would, but for the location of that other person's place of work or of any educational institution which the person attends, be the living accommodation concerned.
- (8) The sheriff's decision on the application is final.

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- (9) Refusal by the sheriff to grant any warrant sought under this section does not affect the validity of the work notice, demolition notice or repairing standard enforcement order in relation to which the warrant was sought.
- (10) Nothing in [F2 an enactment mentioned in subsection (11)] restricts the power of a local authority to apply for, or the power of the sheriff to grant, a warrant under subsection (4).
- [F3(11) The enactments referred to in subsection (10) are—
- (a) the Rent (Scotland) Act 1984,
 - (b) Part 2 of the Housing (Scotland) Act 1988,
 - (c) the Private Housing (Tenancies) (Scotland) Act 2016.]

Textual Amendments

- F2** Words in s. 38(10) substituted (1.12.2017) by [Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(asp 19\)](#), s. 79(2), [sch. 4 para. 9\(2\)\(a\)](#); S.S.I. 2017/346, reg. 2, sch.
- F3** S. 38(11) inserted (1.12.2017) by [Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(asp 19\)](#), s. 79(2), [sch. 4 para. 9\(2\)\(b\)](#); S.S.I. 2017/346, reg. 2, sch.

39 Unlawful occupation etc.

- (1) A person commits an offence if the person, knowing that a requirement under section 37(1) has effect in relation to any land or premises—
- (a) occupies it or them, or
 - (b) permits such occupation.
- (2) A person guilty of an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.
- (3) It is not an offence under subsection (1)—
- (a) for a person to continue to occupy any land or premises which that person occupied on the day on which the requirement under section 37(1) is made, or
 - (b) to permit such a person to continue occupation.

40 Acquisition of houses to be demolished

- (1) Where a local authority is authorised by section 35 to demolish a house the authority may, before carrying out the demolition, acquire the house and its site—
- (a) by agreement, or
 - (b) with the authorisation of the Scottish Ministers, compulsorily.
- (2) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) applies in relation to an acquisition under subsection (1)(b) as if that provision were contained in an Act of Parliament in force immediately before the commencement of that Act (with references in that Act to land being read as references to the house and its site).

Changes to legislation: There are currently no known outstanding effects for the Housing (Scotland) Act 2006, Cross Heading: Enforcement by local authority. (See end of Document for details)

Commencement Information

I2 S. 40 in force at 1.4.2009 by [S.S.I. 2009/122](#), **art. 3**

41 Sale of materials from demolished houses

- (1) The local authority may sell any material arising from the demolition of a house in pursuance of section 35.
- (2) The local authority may set off the proceeds of any such sale against any sum recoverable under section 59 in relation to the demolition (so far as not otherwise recovered).
- (3) If those proceeds exceed the total of any such sums, the local authority must account to the owner of the house for the surplus.

Commencement Information

I3 S. 41 in force at 1.4.2009 by [S.S.I. 2009/122](#), **art. 3**

Changes to legislation:

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