



Housing (Scotland) Act 2006

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PART 2

SCHEME OF ASSISTANCE FOR HOUSING PURPOSES

Grants and loans

74 Grants and loans: applications

- (1) A grant or loan may be made only on an application to the local authority.
- (2) The application must contain full particulars of—
 - (a) the work in question, including plans and specifications of the work,
 - (b) the land on or premises in which the work is to be, or is being, carried out,
 - (c) the expenses (including any professional fees) estimated to be incurred in carrying out the work, and
 - (d) such other matters, including information on the matters mentioned in section 77, as may be required by regulations under section 188.
- (3) Where the application is for an amount of grant or loan representing a proportion of the total expense estimated under subsection (2)(c), the application must specify that proportion.
- (4) A local authority may require an applicant to provide, within such reasonable period as it may specify, such information as it considers necessary to satisfy itself that the information in the application form is accurate.
- (5) The authority must disregard any application from an applicant who fails to comply with such a requirement.

75 Determination of applications

- (1) Subject to the provisions of this Part, it is for the local authority to decide whether to approve an application for a grant or loan.
- (2) On approving an application, the local authority must then determine—
 - (a) the approved expense in accordance with section 76, and

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- (b) where the application is for a grant or subsidised loan, the applicant's contribution under section 77.
- (3) A local authority may approve an application for a grant or loan only if, in its opinion, all of the conditions in subsection (4) (so far as applicable) are satisfied.
- (4) Those conditions are—
- (a) that the owners of any land on or premises in which the work is to be, or is being, carried out (other than land or premises proposed to be sold or leased under section 12(4) of the 1987 Act) have consented in writing to the application and to being bound by the conditions mentioned in section 83 (in so far as those conditions apply),
 - (b) where that work has begun, that there were good reasons for beginning it before the application was approved,
 - (c) that the house or houses to which the application relates will provide suitable living accommodation for such period, and conform with such requirements with respect to construction and physical condition and the provision of services and amenities, as the authority considers reasonable,
 - (d) that, if the house or houses to which the application relates form part of any premises containing more than one house, the work to be carried out will not prevent the improvement of any other house in the premises, and
 - (e) that, in the case of an application for a standard loan, the applicant is unable to obtain a sufficient loan on fair terms from a commercial lender.
- (5) In subsection (4)(e)—
- “commercial lender” means a person who—
- (a) has permission under Part 4 of or is otherwise authorised under the Financial Services and Markets Act 2000 (c. 8) to pay money under a contract on terms under which it will be repaid or otherwise to provide credit,
 - (b) is an exempt person within the meaning of that Act in relation to the activity mentioned in paragraph (a), or
 - (c) holds a licence under Part 3 of the Consumer Credit Act 1974 (c. 39) to carry on a consumer credit business or consumer hire business or who, by virtue of section 21 of that Act, does not require such a licence, and
- “fair terms” means terms which, in the opinion of the local authority, are reasonable and affordable having regard to the circumstances of the applicant and the interest rates prevailing at the time the loan was applied for.
- (6) Subsection (5)(a) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000,
 - (b) any relevant order under that section, and
 - (c) Schedule 2 to that Act.
- (7) The authority may, as a condition of paying the grant or loan, impose a requirement that the work to which the grant or loan relates is completed within such period (being a period of not less than 12 months) as the authority may specify or within such further period as the authority may allow.

76 The approved expense

- (1) The approved expense, in relation to the work referred to in an application for a grant or loan, is the amount of—
 - (a) the expense of carrying out the work, or
 - (b) the proportion of that expense (as specified in the application),which the local authority considers reasonable.
- (2) If, after approving an application for a grant or loan, the authority is satisfied that—
 - (a) the expense of carrying out the work will exceed the expense estimated in the application, and
 - (b) the increase is due to circumstances beyond the control of the applicant,the authority may, on receipt of a further estimate, substitute a higher amount as the amount of the approved expense in accordance with subsection (1).
- (3) Subsections (1) and (2) are subject to subsections (4) and (5).
- (4) The Scottish Ministers may, by order, provide that the approved expense in relation to a grant or loan must not, unless they otherwise consent, exceed such amount as may be specified in the order.
- (5) In circumstances mentioned in a statement prepared under section 72(1)(b), a local authority may limit the amount of the approved expense in relation to a particular grant or loan to an amount determined in the manner specified in the statement.
- (6) Despite subsection (5), a local authority may not limit the amount of the approved expense in relation to an application falling within subsection (7) unless—
 - (a) the Scottish Ministers consent to the limitation, or
 - (b) the approved expense would otherwise exceed the amount specified in an order under subsection (4).
- (7) An application falls within this subsection if it is made in connection with work in a house for either of the purposes set out in paragraphs (e) and (f) of section 71(2), where the house is (or is likely to become or, in the case of reinstatement, was) a disabled person's only or main residence.

77 Assessment of applicant's contribution

- (1) The Scottish Ministers may by regulations make provision for the assessment, in relation to such classes of application for a grant or a subsidised loan as the regulations may specify, of an amount to be treated, for the purposes of this Part, as the applicant's contribution towards the approved expense ("the applicant's contribution").
- (2) Regulations under subsection (1) may provide for the assessment to be by reference to—
 - (a) the income and other financial circumstances of any of the following—
 - (i) the applicant,
 - (ii) the applicant's spouse or civil partner,
 - (iii) any person on whom the applicant is dependent or who is dependent on the applicant,
 - (iv) any person who resides or intends to reside with the applicant,
 - (b) such other criteria as the Scottish Ministers think fit.

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- (3) Regulations under subsection (1) may make provision—
- (a) for a local authority, with the consent of the Scottish Ministers, to reduce the applicant's contribution by an amount determined by the authority in such cases as may be specified in the regulations,
 - (b) for the delegation of functions conferred by this section.

78 Applicant's contribution: review

- (1) Where an applicant for a grant or a subsidised loan requests a review of an assessment of the applicant's contribution, the local authority must review the assessment.
- (2) A request for a review must be made before the end of the period of 21 days beginning with the day on which the notice under section 81(1) was given or such longer period as the authority may allow.
- (3) A review under subsection (1) is to be carried out by a person senior to the person who made the assessment being reviewed and who had no involvement in the making of the assessment.
- (4) The authority must notify the applicant of the decision reached on the review.
- (5) There is no right to request a review of a decision reached on review.

79 Amount of grant or loan

- (1) The amount of a grant is the greater of—
 - (a) the approved expense less the applicant's contribution (if any), or
 - (b) where subsection (6) applies, the amount determined by virtue of that subsection.
- (2) The amount of a standard loan is the approved expense (unless section 88(1)(b) applies).
- (3) The amount of a subsidised loan is the approved expense which is divided into two elements—
 - (a) an interest free element, and
 - (b) a repayment element.
- (4) The amount of the interest free element is the greater of—
 - (a) the approved expense less the applicant's contribution (if any), or
 - (b) where subsection (6) applies, the amount determined by virtue of that subsection.
- (5) The amount of the repayment element is the approved expense less the amount of the interest free element.
- (6) In such cases as the Scottish Ministers may specify in regulations, the amount for the purposes of subsection (1)(b) and (4)(b) is such percentage of the approved expense as may be so specified or such other percentage as a local authority may, with the consent of the Scottish Ministers, determine.
- (7) Where the amount of a grant or of the interest free element of a subsidised loan is determined by virtue of subsection (6), the grant or subsidised loan is referred to in this Part as a "minimum percentage" grant or loan.

80 Terms of loan

- (1) A loan may be made on such terms as the local authority thinks fit.
- (2) Those terms may include—
 - (a) terms as to interest, other charges and repayment,
 - (b) a requirement that the loan, and any such interest and charges, be secured by a standard security over the land on or premises in which the work to which the loan relates is carried out.
- (3) But, despite subsection (1)—
 - (a) no interest or other charge is to be payable in respect of the interest free element of a subsidised loan,
 - (b) the local authority may not demand repayment of that element of such a loan (or any part of it) unless the applicant to whom the loan is paid disposes of an interest in the land or premises, and
 - (c) the repayment element of such a loan is to be repaid in instalments of such amounts and at such times as the authority may determine.
- (4) For the purposes of this section, a person is to be treated as disposing of an interest in any land or premises if—
 - (a) the person disposes of the land or premises (or any part of it or them) by way of sale, exchange or gift, or by way of the creation of any right or privilege over that interest or by any other way except by way of lease, the grant of a standard security or other charge or the creation of a servitude, or
 - (b) where the person holds an interest as tenant, the person ceases to be entitled to occupy the land or premises as tenant.

81 Notification of decisions

- (1) On approving an application for a grant or loan the local authority must notify the applicant of—
 - (a) the approved expense,
 - (b) the applicant's contribution (where it has been assessed under section 77),
 - (c) the amount of the grant or loan (and, where the grant or loan is a minimum percentage grant or loan, a statement of that fact), and
 - (d) the terms (including, in the case of a loan, terms as to interest and repayment) on which the grant or loan is offered.
- (2) Where the applicant is not the owner of the land on or premises in which the work to which the application relates is to be, or is being, carried out, the local authority must notify the owner of the matters mentioned in subsection (1)(c) and (d).
- (3) In relation to a loan the notice must also advise the applicant to obtain independent advice from a suitably qualified person on the terms on which the loan is offered.
- (4) Where an authority—
 - (a) refuses an application, or
 - (b) approves an application but fixes as the approved expense in respect of any land or premises an amount less than the amount of the expense estimated in the application or, as the case may be, the proportion of that expense specified in the application in respect of that land or those premises (unless the approved

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expense is the maximum amount which may be fixed by virtue of an order made under section 76(4)),
it must notify the applicant of the reasons for its decision.

82 Payment of grants and loans

- (1) A local authority must, if the conditions mentioned in subsection (2) are satisfied, pay a grant or loan—
 - (a) within one month of the date on which, in the authority’s opinion, the house to which the grant or loan relates becomes fit for occupation on completion of the work to which the grant or loan relates, or
 - (b) by instalments during the carrying out of the work and a final instalment within one month of that date.
- (2) Those conditions are—
 - (a) that the work has been carried out to the satisfaction of the authority, and
 - (b) in the case of a loan to be secured by a standard security, that the security has been registered in the appropriate land register.
- (3) Where payment of a loan is by instalments, subsection (2)(b) applies to payment of the first instalment.
- (4) The payment of an instalment is conditional on the part of the work which the authority considers will entitle the applicant to payment of the instalment having been carried out to the satisfaction of the authority.
- (5) The aggregate of instalments of a grant paid before the completion of the work must not at any time exceed the sum calculated using the following formula—

$$\frac{G}{A} \times W$$

where—

G is the amount of the grant,

A is the approved expense, and

W is the amount of the approved expense referable to the work carried out up to that time.

- (6) Subsection (7) applies where—
 - (a) an instalment of a grant or loan is paid before completion of the work, and
 - (b) the work is not completed within 12 months of the date of payment.
- (7) Where this subsection applies, the applicant to whom the instalment is paid must, if the authority so requires, repay to the authority the instalment and any subsequent instalments together with interest from the date on which each instalment was paid at such rate as the authority may determine.