



Housing (Scotland) Act 2006

2006 asp 1

PART 1

HOUSING STANDARDS

CHAPTER 8

SUPPLEMENTAL PROVISIONS, INCLUDING APPEALS

Supplemental

55 Power of local authority to carry out or arrange work or demolition

A local authority may carry out, or arrange for the carrying out of, any work or demolition which any other person is required or authorised by or under this Part to carry out (but only by agreement with, and at the expense of, that other person).

56 Effect of tenant moving from house

(1) Where—

(a) a person moves from any house for the purposes of enabling any person to carry out any work required or authorised by or under this Part (whether in pursuance of a requirement under section 37(1) or a warrant under section 38(4) or otherwise), and

(b) that person resides in the house under a tenancy or an occupancy arrangement, the tenancy or occupancy arrangement, if that person so chooses, is to be taken not to have terminated, varied or altered by reason of that person moving.

(2) If a person who has so moved resumes lawful occupation, the same terms apply (except so far as otherwise agreed) in respect of that occupation as applied in respect of the previous occupation.

(3) In this section “lawful occupation” means occupation which is not an offence under section 39.

Status: This is the original version (as it was originally enacted).

57 Obstructions etc.

- (1) This section applies if, after receiving notice of the intended action, any person prevents or obstructs any other person from doing anything which that other person is by or under this Part required, authorised or entitled to do.
- (2) Where this section applies, the sheriff may order the person who prevented or obstructed another person to permit that other person to do all things which the other person reasonably requires to do for the purposes of—
 - (a) complying with any requirement imposed by or under this Part, or
 - (b) doing anything which that other person is by or under this Part authorised or entitled to do.
- (3) Any person who fails to comply with such an order is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) This section does not apply in relation to rights conferred by Part 9 (except the right conferred by section 181(4)(a)).

58 Listed buildings etc.

- (1) This section applies to a building which is—
 - (a) included in a list of buildings of special architectural or historic interest, being a list compiled or approved under section 1 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c. 9) (“the 1997 Act”),
 - (b) subject to a building preservation notice under section 3 of the 1997 Act, or
 - (c) one to which section 66 of the 1997 Act (control of demolition in conservation areas) applies.
- (2) The local authority must, before it carries out any work in, or demolishes, any house which is, or which forms part of, a building to which this section applies in pursuance of section 35 or 36, consult—
 - (a) the Scottish Ministers,
 - (b) the planning authority (where the planning authority is not the local authority), and
 - (c) such other persons as the local authority thinks fit.
- (3) Any authorisation or requirement under this Part to demolish or carry out work in or in relation to a building to which this section applies has effect only in so far as it is not inconsistent with any provision of the 1997 Act.

59 Recovery of expenses etc.

- (1) The local authority may recover any—
 - (a) expenses it incurs in carrying out any work authorised by section 35,
 - (b) expenses it incurs in pursuance of section 49(1), or
 - (c) payments made under section 50(3),from the owner of the house concerned.
- (2) The local authority may recover any expenses it incurs in carrying out any work authorised by section 36 from the landlord concerned.
- (3) Subsections (1) and (2) entitle the local authority to recover—

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- (a) any administrative expenses incurred by it in connection with the act to which the expenses relate or, as the case may be, with the making of the payment, and
 - (b) interest, at such reasonable rate as it may determine, from the date when a demand for payment is served until the whole amount is paid.
- (4) The local authority may declare any sums recoverable under this section to be payable by instalments.
- (5) Notice of any such declaration must be served on the person from whom the sums are recoverable.
- (6) A local authority is not, despite the generality of subsection (1)(a), entitled to recover any expenses incurred in demolishing a house it has acquired under section 40.

60 Certification

- (1) A person who is required to carry out work by—
- (a) a work notice, or
 - (b) a repairing standard enforcement order,
- may apply for certification that the work has been completed.
- (2) An application under subsection (1) is to be made—
- (a) where it is made in consequence of a work notice, to the local authority, or
 - (b) where it is made in consequence of a repairing standard enforcement order, to the private rented housing committee which made the order.
- (3) Where the work was carried out by the local authority under section 35 or 36, an application under this section is not competent unless the applicant has paid any expenses demanded by the local authority under section 59 in relation to that work.
- (4) The local authority or, as the case may be, the committee must grant the certificate applied for if satisfied that the work required by the notice or order has been completed.
- (5) A private rented housing committee may, of their own accord—
- (a) inspect any house in respect of which they have made a repairing standard enforcement order, and
 - (b) if they are satisfied that the work required by the order has been completed, certify that the work has been completed,
- but the committee may not exercise their power under this subsection unless the period within which the order requires the work to be carried out has ended.

61 Registration

- (1) Each—
- (a) repairing standard enforcement order,
 - (b) notice of a decision to vary or revoke a repairing standard enforcement order,
 - (c) certificate granted by a private rented housing committee under section 60,
 - (d) maintenance order,
 - (e) maintenance plan approved, devised or varied under this Part, and
 - (f) notice of revocation of a maintenance plan,
- must be registered in the appropriate land register.

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- (2) It is for the private rented housing committee which made the repairing standard enforcement order concerned to register documents falling within paragraph (a) to (c) of subsection (1).
- (3) It is for the local authority to register documents falling within paragraph (d) to (f) of subsection (1).
- (4) The Keeper of the Registers of Scotland is not required to investigate or determine the accuracy of any information contained in any document falling within paragraphs (a) to (f) of subsection (1) which is submitted for registration.
- (5) In section 12(3) (exemptions from indemnification by Keeper) of the Land Registration (Scotland) Act 1979 (c. 33), after paragraph (q) insert—
 - “(r) the loss arises in consequence of an inaccuracy in any information contained in any document registered in pursuance of section 61(1) of the Housing (Scotland) Act 2006 (asp 1).”.

62 Service of documents

- (1) The section applies to the following documents—
 - (a) work notices,
 - (b) notices under section 31(3), 32(2) or 34(3),
 - (c) demolition notices,
 - (d) notices under section 35(3),
 - (e) maintenance orders,
 - (f) notices of decisions under section 46(1), and
 - (g) notices of variation or revocation of maintenance plans.
- (2) A document to which this section applies must be served on—
 - (a) the owner and occupier of the house concerned,
 - (b) any creditor holding a standard security over that house,
 - (c) any person who, directly or indirectly, receives rent in respect of that house, and
 - (d) any other person appearing to the local authority to have an interest in that house,

and the document is to be treated as being served or, as the case may be, made on the day on which the document is served on the owner of the house.
- (3) Failure to comply with any of paragraphs (b) to (d) of subsection (2) does not invalidate the document concerned if the local authority, after exercising its powers under section 186(1), is not aware of the existence of the person on whom the document should have been served.

63 Date of operation of notices, orders etc.

- (1) Unless this section provides otherwise, any order, notice, requirement, application, consent or other document served, submitted, given or made, or any other decision made, under this Part has effect from the date on which the document or, as the case may be, notice of the document or decision is served.
- (2) Subsection (3) applies where a decision to—

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- (a) make or vary a repairing standard enforcement order,
 - (b) serve a work notice or a demolition notice,
 - (c) make a maintenance order, or
 - (d) approve, devise, vary or revoke a maintenance plan,is appealed under section 64.
- (3) Where this subsection applies—
 - (a) the effect of the decision and of the order, notice, plan, variation or revocation made in consequence of it is suspended until the appeal is abandoned or finally determined, and
 - (b) where the appeal is abandoned or finally determined by confirming the decision, the decision and the order, notice, plan, variation or revocation made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.
- (4) A—
 - (a) rent relief order, or
 - (b) revocation of such an order,has effect from the date set out in subsection (5).
- (5) That date is the date which is 28 days after—
 - (a) the last date on which the decision to make or, as the case may be, revoke the rent relief order may be appealed under section 64, or
 - (b) where such an appeal is made, the date on which the appeal is abandoned or finally determined (by confirming the decision).
- (6) A repairing standard enforcement order does not cease to have effect where work required by the order would, but for the order, no longer require to be carried out.
- (7) No work may be done or proceedings taken under any order, notice or plan to which subsection (2) or (4) applies, and no requirement to register any such order, notice or plan has effect, until—
 - (a) the last date on which the decision to make it may be appealed, or
 - (b) where such an appeal is made, the date on which the appeal is abandoned or finally determined (by confirming the decision).
- (8) References in this section to the date on which an appeal is finally determined are to be read as references—
 - (a) where the sheriff's determination on the appeal is final, to the date on which the sheriff determines the appeal,
 - (b) where the sheriff's determination may be appealed to the sheriff principal—
 - (i) to the last date on which such an appeal may be made, or
 - (ii) where such an appeal is made, to the date on which the appeal is abandoned or determined by the sheriff principal.
- (9) A reference in this section to the last date on which a decision may be appealed is, where that date is in any case changed under section 64(7), to be read as referring to the new date only if the change is made before the date on which the right to appeal would otherwise expire.

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Appeals

64 Part 1 appeals

- (1) Any person aggrieved by a decision by a local authority—
- (a) to serve a work notice,
 - (b) to serve a demolition notice,
 - (c) to carry out work in pursuance of—
 - (i) section 35(1)(b), or
 - (ii) section 36(1)(b),
 other than, in either case, work for which no notice is required,
 - (d) to demand recovery of any expenses incurred in carrying out work authorised by—
 - (i) section 35, or
 - (ii) section 36,
 - (e) to serve a maintenance order,
 - (f) to approve or devise a maintenance plan or to vary or revoke such a plan, or
 - (g) to refuse to grant a certificate under section 60 in relation to any work required by a work notice,
- may appeal to the sheriff within 21 days of the date specified in subsection (2).
- (2) That date is—
- (a) in the case of an appeal under paragraph (a), (b), (d) or (e) of subsection (1), the date on which the work notice, demolition notice, demand for recovery of expenses or, as the case may be, maintenance order is served on the appellant,
 - (b) in the case of an appeal under paragraph (c) or (g) of subsection (1), the date on which notice of proposed work or, as the case may be, of the decision to refuse to grant the certificate is served on the appellant, or
 - (c) in the case of an appeal under paragraph (f) of subsection (1), the date on which notice of the approval, devising, variation or revocation is served on the appellant.
- (3) An appeal under subsection (1) may be made only by a person on whom the relevant work notice, notice of proposed work, demand for recovery of expenses, maintenance order or, as the case may be, notice of the approval, devising, variation or revocation of a maintenance plan is served under this Act.
- (4) A landlord or a tenant aggrieved by a decision by a private rented housing committee—
- (a) under section 24(1) (decision on a tenant’s application),
 - (b) to vary or revoke a repairing standard enforcement order (see section 25),
 - (c) that a landlord has failed to comply with a repairing standard enforcement order (see section 26(1)),
 - (d) to make or not to make a rent relief order (see section 26(2)(b)),
 - (e) to revoke a rent relief order (see section 27(4)), or
 - (f) to grant, or to refuse to grant, a certificate under section 60 in relation to any work required by a repairing standard enforcement order,
- may appeal to the sheriff within 21 days of being notified of that decision.

- (5) A tenant may appeal to the sheriff against a decision by the president of the private rented housing panel under section 23(1) within 21 days of being notified of that decision.
- (6) A tenant aggrieved by a decision by a landlord—
 - (a) to impose any condition on a consent to carry out work in pursuance of section 52(2), or
 - (b) to refuse to consent to the carrying out of any such work,may appeal to the sheriff within 6 months of being notified of that decision.
- (7) The sheriff may, on cause shown, hear an appeal after the deadline set by subsection (1), (4), (5) or, as the case may be, (6).

65 Part 1 appeals: determination

- (1) The sheriff, in determining an appeal under 64(1), may—
 - (a) confirm the decision (and any work notice, demolition notice, demand for recovery of expenses or maintenance order served, or maintenance plan approved, devised or varied, in consequence of it),
 - (b) quash the decision (and any such notice, demand, order or plan), or
 - (c) make such other order as the sheriff thinks just.
- (2) The sheriff may determine an appeal under section 64(4) or (5) by—
 - (a) confirming the decision (and any order or variation made, or certificate granted, in consequence of it),
 - (b) remitting the decision (together with the sheriff’s reasons for doing so) to the president or, as the case may be, the committee for reconsideration, or
 - (c) quashing the decision (and any order or variation made, or certificate granted, in consequence of it).
- (3) The sheriff must, unless the sheriff considers the condition or, as the case may be, refusal appealed against to be reasonable, determine an appeal under section 64(6) by quashing the decision and directing the landlord to withdraw the condition (or to vary it in such manner as the sheriff may specify) or, as the case may be, to consent to the application (with or without such conditions as the sheriff may specify).
- (4) In determining whether a condition or refusal appealed against under section 64(6) is reasonable, the sheriff must, where the appeal relates to an application made for the purposes of section 52(2)(a), have regard to any code of practice issued by the Disability Rights Commission which relates to section 52 or 53.
- (5) The sheriff’s determination on an appeal under section 64 is final (subject to subsection (6)).
- (6) The sheriff’s determination on an appeal under paragraph (a), (b), (c)(i), (d)(i) or (g) of section 64(1) may be appealed to the sheriff principal within 21 days of the sheriff’s determination; and the sheriff principal’s decision on any such appeal is final.

66 Part 1 appeals: procedure etc.

- (1) An appeal under section 64 is to be made by summary application.

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- (2) No question may be raised on an appeal under section 64(1)(c)(i), (d)(i) or (g) (or on a subsequent appeal to the sheriff principal) which might have been raised on an appeal against the decision to make the work notice or demolition notice to which the appeal relates.
- (3) No question may be raised on an appeal under subsection (1)(c)(ii) or (d)(ii), or subsection (4)(d), (e) or (f), of section 64 which might have been raised on an appeal against the decision under section 24(1) in consequence of which the repairing standard enforcement order to which the appeal relates was made.
- (4) The sheriff may make such order about the expenses of an appeal under section 64 as the sheriff thinks fit (and the sheriff principal may make such an order in relation to any subsequent appeal).

67 Adaptations: power to change method of appeal

- (1) The Scottish Ministers may by regulations—
 - (a) disapply section 64(6), and
 - (b) provide that appeals against landlord’s decisions of the type mentioned in that provision may be made to the private rented housing panel instead of to the sheriff.
- (2) Regulations under subsection (1) may in particular—
 - (a) permit the president of the private rented housing panel to refer an appeal against such a decision to a private rented housing committee for determination,
 - (b) require the panel or, as the case may be, the committee determining such an appeal to have regard to—
 - (i) where the appeal relates to an application made for the purposes of section 52(2)(a), any code of practice issued by the Disability Rights Commission which relates to section 52 or 53, and
 - (ii) such other matters as may be specified in the regulations,
 - (c) provide that the determination of the panel or, as the case may be, the committee on such an appeal may be appealed to the sheriff,
 - (d) make provision about the payment of allowances and expenses in respect of such an appeal,
 - (e) make such further provision about the procedure relating to such an appeal or to an appeal to the sheriff of the type mentioned in paragraph (c) as the Scottish Ministers think fit.