



# Housing (Scotland) Act 2006

## 2006 asp 1

### PART 3

#### PROVISION OF INFORMATION ON SALE OF HOUSE

##### *Duty to have or provide information about houses on the market*

#### **98 Duty to have information about a house which is on the market**

A person who is responsible for marketing a house which is on the market must possess the prescribed documents in relation to the house.

#### **99 Duty to provide information to potential buyer**

- (1) A person who is responsible for marketing a house which is on the market must comply with any request by a potential buyer for a copy of any or all of the prescribed documents in relation to the house.
- (2) Such a request must be complied with within such period as the Scottish Ministers may by regulations specify (“the permitted period”).
- (3) The duty under subsection (1) does not apply if the person responsible for marketing the house reasonably believes that the person making the request—
  - (a) is unlikely to have sufficient means to buy the house in question,
  - (b) is not genuinely interested in buying the house, or
  - (c) is not a person to whom the seller is likely to be prepared to sell the house.
- (4) Nothing in subsection (3) authorises the doing of anything which is an unlawful act of discrimination.
- (5) Subsection (3) does not apply if the person responsible for marketing the house knows or suspects that the person making the request is an officer of an enforcement authority.
- (6) The person responsible for marketing the house may charge a sum not exceeding the reasonable cost of making and, if requested, sending a paper copy of any prescribed documents requested under subsection (1).

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- (7) If the person responsible for marketing the house ceases to be so responsible before the end of the permitted period (whether because the house has been sold, taken off the market or for any other reason), that person ceases to be under any duty to comply with a request made under subsection (1).
- (8) A person does not comply with the duty under subsection (1) by providing a copy in electronic form unless the potential buyer consents in writing to receiving it in that form.

## **100 Imposition of conditions on provision of information**

- (1) A potential buyer who has made a request to which section 99(1) applies may be required to comply with either or both of the following conditions before a copy is provided.
- (2) The potential buyer may be required to pay a charge authorised by section 99(6).
- (3) The potential buyer may be required to accept any terms specified in writing which—
  - (a) are proposed by the seller or in pursuance of the seller’s instructions, and
  - (b) relate to the use or disclosure of the copy (or any information contained in or derived from it).
- (4) A condition is effective only if it is notified to the potential buyer before the end of the permitted period.
- (5) Where the potential buyer has been so notified of either or both of the conditions authorised by this section, the permitted period for the purposes of section 99(2) is to run afresh beginning with—
  - (a) where one condition only is involved, the day on which the potential buyer complies with it by making the payment demanded or, as the case may be, accepting the terms proposed (or such other terms as may be agreed between the seller and the potential buyer in substitution for those proposed), or
  - (b) where both conditions are involved, the day on which the potential buyer complies with them or, where each condition is complied with on a different day, the later of those days.

## **101 Other duties of person acting as agent for seller**

- (1) This section applies to a person acting as agent for the seller of a house where—
  - (a) the house is not on the market, or
  - (b) the house is on the market but the person so acting is not responsible for marketing the house.
- (2) A person to whom this section applies must possess the prescribed documents in relation to a house when any qualifying action is taken by or on behalf of that person.
- (3) In subsection (2) “qualifying action” means action taken with the intention of marketing the house which—
  - (a) communicates to any person the fact that the house is or may become available for sale, but
  - (b) does not put the house on the market.

## **102 Acting as agent**

- (1) A person acts as agent for the seller of a house if the person does anything in the course of a business in pursuance of marketing instructions from the seller.
- (2) In subsection (1) “marketing instructions” means instructions to carry out any activities with a view to—
  - (a) effecting the introduction to the seller of a person wishing to buy the house, or
  - (b) selling the house by auction.

## **103 Duty to ensure authenticity of documents held under section 98 or 101**

- (1) This section applies to a person who is subject to the duty in section 98 or 101(2).
- (2) Where such a person—
  - (a) provides a potential buyer with, or
  - (b) allows a potential buyer to inspect,a copy of a prescribed document (or a part of such a document), that person must ensure that the copy is authentic.

### *Prescribed documents*

## **104 Information to be held or provided to potential buyers**

- (1) The Scottish Ministers may by regulations—
  - (a) prescribe documents for the purposes of section 98, 99(1) or 101(2), and
  - (b) make such further provision about those documents as they think fit.
- (2) A document may be prescribed under subsection (1) only if the Scottish Ministers consider that it discloses information about—
  - (a) the physical condition of a house (including any characteristics or features of the house),
  - (b) the value of a house, or
  - (c) any other matter connected with a house, or the sale of a house, that would be of interest to potential buyers.
- (3) Regulations under subsection (1) may, in particular, make provision—
  - (a) about the form of, and the information to be included in, or excluded from, a prescribed document,
  - (b) requiring that a prescribed document be prepared by a person of a description specified in the regulations,
  - (c) requiring that the date to which information in a prescribed document relates is no earlier than the beginning of such period as the regulations may specify before the date on which the house was put on the market,
  - (d) requiring that a prescribed document is to be valid for such period of time, or is to be invalidated in such circumstances, as the regulations may specify.
- (4) Regulations under subsection (1) may also make provision for and in connection with the registration of prescribed documents and may, in particular, make provision—

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- (a) for a register of prescribed documents to be kept by the Scottish Ministers or such other person as the regulations may specify (or for the keeping of 2 or more such registers),
- (b) authorising the Scottish Ministers to make payments or to give other assistance in connection with the creation, administration or operation of such a register,
- (c) requiring persons of such type as may be so specified to register prescribed documents in such circumstances as may be so specified,
- (d) about the circumstances and manner in which, and the purposes for which, information contained in such a register may be inspected, copied or otherwise obtained,
- (e) setting the amount, or the maximum amount, of any fee which may be charged in connection with registering documents or with inspecting or obtaining information contained in such a register,
- (f) for enforcement by enforcement authorities of any requirement to register prescribed documents.

*Exceptions from duty*

**105 Exceptions from duty to have or provide information**

The Scottish Ministers may by regulations—

- (a) exempt persons of such description as the regulations may specify from any of the duties in section 98, 99(1) or 101(2),
- (b) specify periods of time during which or circumstances under which—
  - (i) a person need not possess any prescribed document under section 98 or section 101(2), or
  - (ii) a person need not comply with a request under section 99(1),
- (c) set out such other exceptions to the duties mentioned in paragraph (a) as may be so specified.

*Responsibility for marketing houses*

**106 Responsibility for marketing: general**

- (1) Only the seller or a person acting as agent for the seller may be responsible for marketing the house.
- (2) A seller is not so responsible if any person is acting as agent for the seller.
- (3) But a seller who—
  - (a) is not responsible because of subsection (2), and
  - (b) reasonably believes that the person acting as agent for the seller possesses the prescribed documents,
 must take reasonable steps to inform a potential buyer that a request under section 99(1) should be made to the person acting as agent.
- (4) A person may be responsible for marketing the house on more than one occasion.

### **107 Responsibility of person acting as agent**

- (1) A person acting as agent becomes responsible for marketing the house when action taken by or on behalf of that person results in the house being on the market.
- (2) That responsibility ceases when—
  - (a) the house is sold or taken off the market, or
  - (b) each of the conditions in subsection (3) is satisfied.
- (3) Those conditions are that—
  - (a) the contract between the person acting as agent and the seller is terminated (whether by withdrawal of marketing instructions or otherwise),
  - (b) the person acting as agent has ceased to take any action which makes public the fact that the house is on the market, and
  - (c) any such action being taken on behalf of the person acting as agent has ceased.

### **108 Responsibility of seller**

- (1) A seller becomes responsible for marketing the house when action taken by or on behalf of the seller results in the house being on the market.
- (2) That responsibility ceases when—
  - (a) the house is sold or taken off the market, or
  - (b) the conditions in subsection (3) are satisfied.
- (3) Those conditions are that—
  - (a) the seller has ceased to take any action which makes public the fact that the house is on the market, and
  - (b) any such action being taken on behalf of the seller has ceased.
- (4) In this section references to action taken on behalf of the seller exclude action taken by or on behalf of a person acting as the seller's agent.

### *Enforcement*

### **109 Enforcement authorities**

- (1) Every local weights and measures authority is an enforcement authority for the purposes of this Part.
- (2) It is the duty of each enforcement authority to enforce this Part in their area.

### **110 Power to require production of prescribed documents**

- (1) An authorised officer of an enforcement authority may require a person who appears to the officer to be or to have been subject to the duty under section 98, 99(1) or 101(2) in relation to a house to produce for inspection a copy of any prescribed document in relation to the house.
- (2) The power conferred by subsection (1) includes power—
  - (a) to require the production in a legible documentary form of any document which is held in electronic form, and
  - (b) to take copies of any document produced for inspection.

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- (3) A requirement under this section may not be made more than 6 months after the last day on which the person concerned appeared to the officer to be subject to the duty under section 98, 99(1) or 101(2) in relation to the house.
- (4) A person subject to a requirement under this section must comply with it within the period of 7 days beginning with the day after that on which it is made.
- (5) But a person need not comply with the requirement if the person has a reasonable excuse for not complying with it.

### **111 Penalty charge notices**

- (1) An authorised officer of an enforcement authority may, if the officer believes that a person has breached any duty under section 98, 99(1), 101(2) or 103(2), give a penalty charge notice to that person.
- (2) A penalty charge notice may not be given after the end of the period of 6 months beginning with the day on which it appeared to the officer that the duty was breached.
- (3) Schedule 3 (which makes further provision about penalty charge notices) has effect.
- (4) The Scottish Ministers may by regulations make further provision about penalty charge notices or any other notice mentioned in schedule 3.
- (5) Such regulations may, in particular, include provision prescribing—
  - (a) the form of penalty charge notices or any other notice mentioned in that schedule,
  - (b) circumstances in which penalty charge notices may not be given,
  - (c) the methods by which penalty charge notices or any other notice must be given,
  - (d) the method or methods by which penalty charges may be paid.

### **112 Offences relating to enforcement officers**

- (1) A person who obstructs an authorised officer of an enforcement authority acting in pursuance of section 110 is guilty of an offence.
- (2) A person who, not being an authorised officer of an enforcement authority, purports to act as such in pursuance of section 110 or 111 is guilty of an offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

*Duty to provide information to tenant exercising right to purchase*

### **113 Information for tenants exercising right to purchase**

- (1) The 1987 Act is amended as follows.
- (2) In subsection (2) of section 63 (application to purchase and offer to sell)—
  - (a) the word “and” immediately preceding paragraph (e) is repealed, and
  - (b) after that paragraph, insert—

“; and

(f) information prescribed under section 63A.”.

(3) After section 63 insert—

**“63A Information to be prescribed**

- (1) The Scottish Ministers may by regulations made by statutory instrument—
  - (a) prescribe information for the purpose of paragraph (f) of section 63(2); and
  - (b) make such further provision about that information as they think fit.
- (2) Information prescribed under subsection (1) may include information which—
  - (a) provides a reasonable estimate of any costs of maintaining the house and any common parts;
  - (b) states how long—
    - (i) any common parts;
    - (ii) any fixtures and fittings; or
    - (iii) any items in, forming part of or relating to the house as may be prescribed by the regulations,are expected to last, including a reasonable estimate of the cost of replacing each of the things to which the information relates; and
  - (c) relates to any other matters which may be of interest to a tenant who has served an application to purchase.
- (3) Regulations made under subsection (1) may, in particular, specify circumstances in which an offer to sell need not contain prescribed information unless the tenant pays, or undertakes to pay, to the landlord such sum as may be specified in the regulations.
- (4) In this section “common parts” means any—
  - (a) part of the house;
  - (b) part of any building of which the house forms part; or
  - (c) other property,which the tenant, as owner of the house, would own in common with others or would have an obligation in common with others to maintain.
- (5) Regulations may not be made under subsection (1) unless a draft of the statutory instrument containing the regulations has been laid before and approved by resolution of the Scottish Parliament.”.

*Supplementary*

**114 Grants for development of proposals**

- (1) The Scottish Ministers may make grants towards expenditure incurred by any person in connection with the development of proposals for any provision to be made by regulations under section 104(1).

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- (2) A grant under this section may be made on conditions, which may include (among other things)—
- (a) conditions as to the purposes for which the grant or any part of it may be used,
  - (b) conditions requiring the repayment of the grant or any part of it in such circumstances as may be specified in the conditions.

### **115 Disapplication for houses not available with vacant possession**

- (1) The duties under sections 98, 99, 101 and 103 apply in relation to a house only when it is available for sale with vacant possession.
- (2) For the purposes of this Part, a house being marketed is presumed to be available with vacant possession unless the contrary appears from the manner in which the house is being marketed.

### **116 Application of Part to sub-divided buildings**

- (1) This section applies where—
- (a) two or more houses in a sub-divided building are marketed for sale as a single property, and
  - (b) any one or more of those houses—
    - (i) is not available for sale separately from the others, but
    - (ii) is available with vacant possession.
- (2) The provisions of this Part (but not section 115) apply to the house mentioned in subsection (1)(a) as if it were a single house.
- (3) Subsection (2) does not affect the application of this Part to any of those houses which are available for sale as a separate house.
- (4) In this section “sub-divided building” means a building originally constructed or adapted for use as a single dwelling which has been divided (on one or more occasions) into separate houses.

### **117 Notification of breach of duty**

- (1) An enforcement authority may notify—
- (a) the Office of Fair Trading,
  - (b) any other person or body having an interest,
- of any breach of duty under this Part appearing to the authority to have been committed by a person acting as agent for the seller of a house.
- (2) An enforcement authority must notify the Office of Fair Trading of—
- (a) any penalty charge notice given by an officer of the authority under section 111,
  - (b) any notice given by the authority confirming or withdrawing a penalty charge notice, and
  - (c) the result of any appeal from the confirmation of a penalty charge notice.



## **118 Possession of documents**

- (1) For the purposes of this Part, “possession” includes civil possession; and “possess” and “possesses” are to be construed accordingly.
- (2) A document held in electronic form is to be treated for the purposes of this Part as being in a person’s possession if the person is readily able (using equipment available to that person)—
  - (a) to view the document in a form that is legible, and
  - (b) to produce copies of it in a legible documentary form.

## **119 Meaning of “on the market”, “sale” and related expressions**

- (1) In this Part references to “the market” are to the market for houses in Scotland.
- (2) A house is on the market when the fact that it is or may become available for sale is, with a view to marketing the house, made public in Scotland by or on behalf of the seller.
- (3) A house is to be regarded as remaining on the market until it is sold or taken off the market.
- (4) A fact is made public when it is advertised or otherwise communicated (in whatever form and by whatever means) to the public or a section of the public.
- (5) In this Part—
  - “long lease” means a probative lease—
    - (a) granted for a period exceeding 20 years, or
    - (b) which contains an obligation on the landlord to renew the lease from time to time at fixed periods, upon the termination of a life or lives, or otherwise so that the total duration could (in terms of the lease, as renewed, and without any subsequent agreement, express or implied, between the persons holding the interests of the landlord and the tenant) endure for a period exceeding 20 years,
  - “potential buyer” means a person who claims to be interested, or that the person may become interested, in buying a house,
  - “sale”, in relation to a house, means a disposal, or agreement to dispose, by way of sale of—
    - (a) the ownership of the house,
    - (b) the interest of the tenant under a long lease of a house,and “seller” means a person contemplating such a disposal (and related expressions are to be construed accordingly).