

# GUIDANCE FOR LOCAL AUTHORITIES ON THE REPAIRING STANDARD

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# GUIDANCE FOR LOCAL AUTHORITIES ON THE REPAIRING STANDARD

## Introduction

1. This non-statutory guidance is primarily designed to help local authorities to carry out their roles in relation to the new Repairing Standard for the private rented sector, which is contained in the Housing (Scotland) Act 2006. This measure is part of the Scottish Government's wider strategy to improve standards in the private rented sector. Local authorities will have a crucial role in providing advice to tenants and landlords on the Repairing Standard and the Private Rented Housing Panel (PRHP), the body through which tenants will be able to enforce the standard. Local authorities will also have a role in carrying out work that is required by a Private Rented Housing Committee (PRHC), but which the landlord either cannot or will not do. In addition, the work of the PRHP and PRHCs will have implications for local authorities in relation to such matters as Housing Benefit and landlord registration and accreditation. The Repairing Standard may also affect certain houses owned by local authorities.

2. The guidance may also be useful for bodies providing advice to landlords or tenants. It does not replace the 2006 Act, which is the definitive statement of the legal position. The interpretation of the Act is, of course, ultimately a matter for the courts.

3. In order to improve conditions in the private rented sector, where there is a particularly high concentration of disrepair, the Act replaces and expands on the existing landlord's repairing obligations for private rented housing, contained in Schedule 10 of the Housing (Scotland) Act 1987. It also provides an easier route for enforcement by the tenant of the landlord's obligations, to help to ensure that the standards are met. However, the new standard should not be burdensome for responsible landlords. The requirement to meet the Repairing Standard should also be seen in the context of landlord registration, in which compliance with legal obligations is a key part of the fit and proper person test.

4. The new system will come into effect on **3 September 2007**. It will apply to existing tenancies as well as new ones.

## Details of the new system

### *Repairing Standard*

5. The tenancies to which the Repairing Standard applies are defined by exclusion. The standard applies to any tenancy of a house (including a tied house) that is not

- a Scottish secure tenancy or a short Scottish secure tenancy (they are covered by schedule 4 of the Housing (Scotland) Act 2001);
- a tenancy of a house retained or purchased by a local authority under section 121 of the Housing (Scotland) Act 1987 for use as housing accommodation;
- a tenancy of a house included in an agricultural lease of a specified type and occupied by the tenant of that lease;
- a tenancy of a house on a croft; or
- a tenancy of a house on a holding situated outwith the crofting counties to which any provision of the Small Landholders (Scotland) Acts 1886 to 1931 applies.

6. Basically, the Repairing Standard will apply to most private sector tenancies and those relatively few public sector tenancies of houses which are not Scottish secure tenancies or short Scottish secure tenancies (some types of which are listed in schedule 1 to the Housing (Scotland) Act 2001). In this context, “tenancy” includes any occupation of a house by a person under that person’s terms of employment. Occupancy arrangements which are not leases (eg, when people are living in hostels or other short-term accommodation) are not covered. There are powers in section 7 of the 2001 Act for the Scottish Ministers to make regulations governing the terms of occupancy arrangements.

7. The new Repairing Standard is more extensive than the previous statutory duty to repair and maintain in Schedule 10 of the 1987 Act, and takes in some of the standards for the social rented sector introduced by the Housing (Scotland) Act 2001. A landlord will have to ensure that:

- the house is wind and water tight and reasonably fit for human habitation (taking account of the extent to which the house falls short of any building regulations, because of disrepair or sanitary defects);
- the structure and exterior of the house (including drains, gutters and external pipes) are in reasonable repair and proper working order (having regard to the house’s age, character and prospective life and the locality). Where the house forms part of premises (eg, a flat), this criterion includes any part of the premises that the owner is responsible for maintaining, solely or communally, but the Repairing Standard only applies if any part of, or anything in, the premises that the tenant is entitled to use is adversely affected;
- the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in reasonable repair and proper working order (including installations outside the house but serving it, and which the owner is responsible for maintaining, solely or communally);
- any fixtures, fittings and appliances provided under the tenancy are in reasonable repair and proper working order;
- any furnishings provided under the tenancy are capable of being used safely for the purpose for which they are designed; and
- there is satisfactory provision for detecting and giving warning of fires.

8. The first three of these points were already required under the 1987 Act. Landlords are likely to have a contractual duty in regard to the next two points at the moment, but the change puts that duty on a statutory basis. Since the landlord is receiving rent for fixtures, fittings, appliances and furnishings, it is reasonable to expect that these should be maintained in good order. However, the requirement to have provision for detecting fires is new. In deciding whether that standard is met, regard must be had to any building regulations and guidance on the subject issued by the Scottish Ministers (see paragraph 10). The new provisions take account of the changing nature of the private rented sector, for example in the growth of furnished letting, and of expectations in the modern market.

9. Some parts of the Repairing Standard intersect with other legal requirements, for example to meet the Tolerable Standard and the requirements of the Gas Safety (Installations and Use) Regulations 1998. Also, all furnishings and furniture supplied as part of a let must comply with the relevant parts of the Furniture and Furnishings (Fire) (Safety) Regulations 1988.

10. The Scottish Government has issued statutory guidance on satisfactory provision for detecting and giving warning of fires as follows:

“This criterion should be regarded as met if there is one or more than one functioning smoke alarm installed in the house, the number and position of alarms to be determined by the size and layout of the house. There should normally be at least one smoke alarm on each floor. If there are multiple alarms, they should be interlinked. Although it is best practice to install mains powered smoke alarms, an existing smoke alarm may be mains powered or battery powered. However, a smoke alarm installed from 3 September 2007 onwards must be mains powered. This includes replacement alarms. If there is a requirement for the house to meet a more stringent standard of provision for detecting and giving warning of fire (for example, in a house in multiple occupation [HMO] requiring to be licensed, or under building regulations), then the Repairing Standard criterion is only to be regarded as met if that requirement is met. An alarm should be installed in accordance with the recommendations contained in the British Standard on the design of fire detection installations for dwellings (BS5839 Part 6). The fitting of a hard-wired smoke alarm system may require a building warrant and landlords should consult the Building Standards department of the local authority.

“Landlords should ensure that smoke alarms are regularly maintained in accordance with the manufacturer’s recommendations.”

11. It is a landlord’s duty to ensure that a house meets the Repairing Standard at the start of the tenancy and at all times during it. The landlord (or someone authorised by the landlord) must inspect the house before the tenancy starts, in order to identify work necessary to meet the Repairing Standard, and must notify the tenant of any such work. It would be prudent for the landlord to carry out the pre-tenancy inspection in time to deal with any necessary repairs before the tenancy begins. Once the tenancy is underway, the duty only applies where the landlord is aware that work requires to be done, for example because the tenant has given notification. (Obviously, the tenant must be provided with contact details in order to report problems, including emergencies.) In order to comply with that duty, the landlord must carry out any work within a reasonable time of becoming aware that it is required. The length of time that can be regarded as reasonable will depend on the nature and urgency of the work. It would be helpful if the landlord could indicate to the tenant how long work is likely to take; apart from keeping the tenant informed, this could prevent the tenant from making an unnecessary application to the Private Rented Housing Panel. The landlord (or a person authorised by the landlord) has a right of entry to the house to check whether it meets the Repairing Standard or to carry out work to comply with the Repairing Standard or with a repairing standard enforcement order.

12. The Act specifies exceptions to the landlord’s duty to repair, for example, when the tenant is required to carry out work by the terms of a tenancy lasting for at least three years, or when the landlord lacks rights necessary to carry out work (eg, rights of access or rights to carry out work that requires the agreement of other owners), despite having taken reasonable steps to acquire them.

13. Contracting out from the landlord’s duty to repair is prohibited, unless an application is made to the sheriff to contract out wholly or partly, both the landlord and the tenant consent, and the sheriff is satisfied that such action is reasonable.

14. At the beginning of the tenancy or earlier, the landlord is required to provide the tenant with written information on the relevance of the Repairing Standard provisions (including the means of enforcing the standard) to the tenancy. (This applies to tenancies starting on or after 3 September 2007.) The Scottish Ministers may issue guidance on the form and content of such information and the manner of its provision. Such guidance has been issued as follows:

“The Scottish Ministers advise that the options that a landlord may choose in order to comply with the requirement to provide written information to the tenant are as set out below.

“Where all of the provisions relating to the Repairing Standard and the means of enforcing it apply to the tenancy (which will be the case in the great majority of lettings in the private rented sector), the landlord will comply with the requirement if he or she provides the tenant with the standard information letter which has been issued by the Scottish Ministers. The letter is attached to this guidance and is also available from the Private Rented Housing Panel (PRHP) and Scottish Executive websites. It is also open to a landlord in this situation to provide a letter that he or she has drawn up, as long as it includes all the information in the standard letter.

“Where all of the provisions relating to the Repairing Standard and the means of enforcing it **do not** apply to the tenancy, the landlord should provide to the tenant a letter including the provisions that do apply and explaining any variations or exclusions, for example arising from exclusion or modification of the application of the Repairing Standard to the tenancy under section 18 of the 2006 Act. (Section 18 allows a sheriff to approve the contracting out from or variation of the Repairing Standard provisions if the landlord and tenant agree.) In the case of those landlords referred to in section 22 of the Act (local authorities, registered social landlords, Scottish Homes and Scottish Water), the letter should explain that tenants do not have recourse to the PRHP. The landlord may want to seek legal advice on the drafting of the letter.

“In addition, a landlord may wish to provide the tenant with the leaflet on the Repairing Standard and PRHP published by the Scottish Ministers, *New Rights for Private Sector Tenants: The Repairing Standard and Private Rented Housing Panel*.”

15. A landlord to whom this statutory guidance is issued must have regard to it. The requirement to provide information applies to local authorities and other social landlords where they are parties to tenancies to which the Repairing Standard applies.

### ***Private Rented Housing Panel and Committees***

16. At the moment a tenant has to take court action to enforce the landlord’s repairing obligations. This means of redress is expensive and off-putting and is seldom used. The 2006 Act creates a new mechanism for enforcing the landlord’s repairing duty: the Private Rented Housing Panel. This will be a quicker and easier route to enforce the landlord’s obligations, and should result in more privately rented houses being in better repair.

17. The Private Rented Housing Panel (PRHP) will be an expanded version of the existing Rent Assessment Panel (RAP). It will continue to perform the current functions of

RAP in addition to the new function, using the same structure of committees. A Private Rented Housing Committee will consist of a lawyer (as chairperson), a surveyor and a lay member.

18. Procedures for the operation of the Private Rented Housing Panel and Committees are set out in the 2006 Act and in The Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007 (SSI 2007/173). The PRHP will be producing detailed procedural guidance for tenants and landlords involved in cases.

19. A tenant who believes that the landlord has failed to comply with the duty to meet the Repairing Standard will be able to apply to the PRHP. The tenant must have notified the landlord that the work requires to be done and will have to provide the PRHP with details of how this notification has been made. It would be helpful if the tenant could produce evidence of making notification (for example, by sending a letter by recorded delivery). Details of the date on which the landlord was notified would allow the PRHP to assess whether the landlord has been allowed a reasonable amount of time to do the work. An application cannot be made if the landlord is a local authority landlord (as defined in section 11(3) of the Housing (Scotland) Act 2001), a registered social landlord, Scottish Homes or Scottish Water, even though the Repairing Standard may apply to some of their houses (see paragraph 61).

20. The President of the PRHP must decide whether to reject an application or to refer it immediately to a Private Rented Housing Committee (PRHC). The President may delay this decision if he or she considers that there is a reasonable prospect of the parties resolving the dispute. For example, the landlord might ask for more time to do work, with the tenant agreeing to hold off the action. If both parties agree, the matter may be referred in the first instance to mediation. It is anticipated that many parties will find this less formal and more flexible approach to dispute resolution preferable to the more traditional Committee approach. The mediation service would be provided by trained members of the PRHP.

21. If a PRHC decides that the landlord has failed to comply with the repairing duty, it must issue a repairing standard enforcement order requiring that the necessary work be carried out within a specified period. However, if the PRHC decides that the landlord has not failed to comply, and this decision is based only on the grounds that the landlord lacked necessary rights (such as right of access), despite having taken reasonable steps to acquire them, then the PRHC must serve a notice on the local authority, stating that the landlord is unable to comply with the repairing duty. The local authority then has power to carry out the necessary work and recover its costs (see paragraphs 34 and 49). In such a situation it will, of course, be important that the local authority engages with the landlord (and, if relevant, other owners).

22. The PRHC has power to vary a repairing standard enforcement order, for example, to extend the period within which work is required to be completed. It may revoke the order if it considers that the work required by the order is no longer necessary. The PRHC must notify all interested parties of any such variation or revocation (see paragraph 56).

23. If a PRHC decides that a landlord has failed to comply with a repairing standard enforcement order, it must notify the local authority of this failure and it may make a rent relief order. Notification to the local authority will be accompanied by full details and the other interested parties will also be informed (see paragraph 56). The landlord will not be considered to have failed to comply with the order where he or she lacks necessary rights

(such as rights of access), despite having taken reasonable steps to acquire them, or where the work required by the order is likely to endanger anyone. In either of these cases, the PRHC must notify the local authority that it believes the landlord is unable to comply with the order. A local authority may, at its own discretion, carry out work required under a repairing standard enforcement order that has not been carried out by the landlord, and may demand the expenses of such work from the landlord (see paragraphs 34 and 49).

24. A rent relief order reduces rent payable by up to 90%. The level of reduction will be decided by the PRHC, taking account of all the relevant circumstances. (This may have an effect on any housing benefit payable – see paragraph 60). A PRHC may revoke a rent relief order at any time and must do so if the relevant repairing standard enforcement order is revoked or a certificate is granted stating that the work required has been completed. The tenant is not liable to pay retrospectively the rent that the landlord has lost due to a rent relief order.

25. It is a criminal offence for a landlord to fail to comply with a repairing standard enforcement order, without a reasonable excuse. It is also a criminal offence for a landlord to enter into a new tenancy or occupancy arrangement relating to a house that is currently the subject of a repairing standard enforcement order, unless the PRHC has consented. This provision is designed to provide protection for a tenant who has complained to the PRHP, by limiting the ability of the landlord to let the house to someone else. The PRHC would report apparent offences to the procurator fiscal.

26. A landlord may apply to a PRHC for certification that the work required by a repairing standard enforcement order has been carried out. The committee must grant the certificate if it is satisfied that the required work has been completed. A PRHC also has the power to issue a certificate where there has been no application, after inspecting the house. An application for a certificate of completion is not valid if the landlord has not paid expenses demanded by the local authority after carrying out the work.

27. There are rights of appeal to the sheriff (for landlords and tenants) against decisions of a PRHC. In this connection, the Act makes provision about the dates on which decisions of a PRHC come into effect. If there is an appeal against a decision to make or vary a repairing standard enforcement order, the effect of the decision and order or variation is suspended until the appeal is determined by the sheriff or abandoned. Where the appeal is abandoned or determined by confirmation of the PRHC's decision, the decision and order or variation come into effect on the day the appeal is abandoned or determined.

28. A rent relief order or revocation of a rent relief order comes into effect 28 days after the last date on which an appeal could be made against the decision to make or revoke the rent relief order, unless an appeal is actually made. In that case, the order or revocation comes into effect 28 days after the date on which the appeal is abandoned or the sheriff confirms the PRHC's decision. This avoids a situation in which reduced rent subsequently becomes payable following an appeal.

29. The PRHP will produce an annual report on the exercise of its functions. This report will include details of the number of applications it received which included complaints about the landlord's management of the tenancy.

## **Local authority roles**

### *Advice*

30. It is obviously essential that private landlords are informed of their duty to repair and tenants of the standard of repair to which they are entitled and the process open to them for enforcing that standard. The Scottish Government will be providing information for tenants and landlords by means of a leaflet, which will also be supplied to local authorities and advice agencies. We are keen to publicise the new system as widely as possible, building on experience with the Better Renting website and information.

31. Local authorities will have a crucial part to play, in their role as providers of information and advice on housing matters, in ensuring that landlords and tenants are aware of their new obligations, responsibilities and rights. They should therefore ensure that staff involved in doing this are familiar with the details of the Repairing Standard and the method of enforcing it and their potential relevance to individual cases. Local authorities should incorporate suitable information in any advice they make available to private sector tenants and landlords. It would be helpful if they could include the information leaflet with material sent to private tenants and landlords. Landlord registration will make it easier for local authorities to contact private landlords and tenants, although they should not rely solely on this mechanism.

32. Local authorities should amend their 'Housing Options Guide' to incorporate the range of information and advice available to private landlords and tenants about their rights and responsibilities in terms of the Repairing Standard. Local authorities should raise awareness of amendments made to the Guide with all appropriate staff.

33. It is hoped that local authorities will be able to use the opportunities arising from contacts with landlords and tenants in relation to the Repairing Standard to promote greater engagement with the private rented sector. It would be desirable to forge closer links and better relationships by means of such initiatives as forums for private landlords and tenants.

### *Carrying out work*

34. Section 36 of the 2006 Act allows a local authority at its discretion to carry out the relevant work if it is notified by a PRHC that a landlord is unable to comply with the Repairing Standard duty or has failed or is unable to comply with a repairing standard enforcement order. In the former case, the local authority may carry out work to bring the house up to the Repairing Standard. In the latter case, the local authority may carry out the work required by the repairing standard enforcement order. Furthermore, if the local authority, while carrying out work required by a repairing standard enforcement order, discovers that further work is necessary to enable the original work to be done, it is empowered to carry out that additional work. Whenever possible, the local authority should carry out work in liaison and co-operation with the landlord and, if applicable, other owners.

35. Anyone authorised by a local authority has a right of entry to the premises concerned in order to carry out the work. The local authority must usually give 21 days notice to the landlord and tenant before carrying out work, but this requirement does not apply if the local authority considers that the situation is urgent or that, in the case of necessary additional

work, it would be impractical to carry out the work for which notice had been given without carrying out the additional work.

36. The right of entry extends to adjacent land and, where the house forms part of premises, any other part of the premises. Full details of rights of entry are in Part 9 of the 2006 Act.

37. Section 58 of the Act requires a local authority to consult the Scottish Ministers, the planning authority (if that is not the local authority) and anyone else it thinks fit, before carrying out work on a building protected under certain sections of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. Full details are set out in section 58 of the 2006 Act. A local authority's power to carry out work in relation to the Repairing Standard in such buildings applies only insofar as it is not inconsistent with the 1997 Act. This also applies to landlords.

38. Before deciding whether to exercise its power to carry out works under section 36, the local authority will wish to take into account all the relevant circumstances of the case, particularly the severity of the breach of the Repairing Standard, the potential for the problem to become worse, the effect on the health of occupants of the house and so on. It may decide first to engage with the landlord to encourage him or her to do the work. The local authority will also have to take into account its own priorities. A local authority might, for example, consider that it was not an appropriate use of resources to carry out work in relation to minor defects. On the other hand, it might consider that the benefit to safety and the relatively low level of resources required would justify installing smoke alarms where these were absent. Or it might consider that it would be worthwhile to rectify minor defects using DLO or other contracted repair services at a low cost (which could be recovered). Furthermore, while certain works may appear at first to be a disproportionate use of resources if looking only at the individual case, consideration should also be given to whether the public interest is best served in the long term by the local authorities being seen to take action when enforcement orders are made. That approach by local authorities may encourage landlords to comply with enforcement orders made without the need for further enforcement.

39. Work carried out under section 36 of the 2006 Act falls within the range of activities covered by Private Sector Housing Grant, which reinforces the point about work being done in accordance with the local authority's priorities. A local authority will have to decide how much money it should assume will be required overall for such work (including the potential recovery of sums), based partly on its knowledge of local circumstances and bearing in mind that it is possible that the section 36 powers will be applicable in only a small proportion of cases. Once the system is underway, the PRHP will be able to assist a local authority with information about the level of applications in its area. The local authority will need to reassess its use of funding throughout the year.

40. In some cases of disrepair to buildings, local authorities may consider it appropriate to use other powers available to them (for example, under the Housing (Scotland) Act 1987 or, once they are brought into force, the relevant sections of the 2006 Act, including work notices and maintenance orders), rather than the section 36 power. Local authorities should consider doing this in particular when responsibility for carrying out the necessary work belongs to other owners in addition to the landlord, because section 59(2) of the 2006 Act permits recovery of costs incurred in carrying out work authorised by section 36 only from the landlord.

41. In serious cases of non-compliance by a landlord, the local authority should closely consider the possibility of removing registration from that landlord. The knowledge that this is being done could encourage compliance.

### Evacuation and ejection

42. If a local authority considers that carrying out work authorised by section 36 is likely to endanger the occupant of any land or premises, it must require that person to move by serving a notice on them. The notice must refer to the work to be done, explain why the occupant is required to move, and give the period within which the occupant must move, which must begin at least 14 days after the date on which the notice is served. A requirement to move will fall if a sheriff refuses to grant a warrant of ejection in relation to it or if the work is completed.

43. If an occupant does not move within the specified time as required by a notice served on them, the local authority may apply to the sheriff for a warrant of ejection. The sheriff may require a further notice to be served on the occupant. If the sheriff is satisfied that the occupant is likely to be endangered by the carrying out of the work, the sheriff may grant a warrant of ejection requiring the occupant to move within a period decided by the sheriff and until the work is completed. There is no right of appeal against the sheriff's decision. Where the sheriff has required a further notice to be served on the occupant, the occupant is not to be required to move until at least 14 days after that notice was served. The sheriff may attach further conditions to the warrant (such as suspending the payment of rent).

44. The sheriff must be satisfied that the occupant has access to suitable alternative accommodation on reasonable terms before issuing a warrant of ejection from the occupant's only or main residence. Such alternative accommodation must also be suitable for any other person whose only or main residence would be the living accommodation concerned, were it not for the location of that person's place of work or of an educational institution they attend. This would, for example, cover a child who was away at university.

45. If the sheriff refuses to grant a warrant of ejection, the validity of the repairing standard enforcement order concerned is not affected. A local authority's power to apply for a warrant and the sheriff's to grant one are not affected by the provisions regarding tenancy rights of the Rent (Scotland) Act 1984 or Part 2 of the Housing (Scotland) Act 1988.

46. It is an offence to occupy land or premises, or to permit them to be occupied, knowing that a local authority's notice to move applies to them, unless the person concerned is continuing to occupy them, having occupied them on the day the notice was served.

47. It would be good practice for the local authority to assist a tenant who was required to move out to find alternative accommodation, if appropriate. Various departments and agencies, including local authority homelessness services, should have a role in providing advice and assistance to people in this situation.

48. Section 56 of the 2006 Act provides that, if a person living in a house under a tenancy is required to move out so that work to meet the Repairing Standard can be carried out, the tenancy is not terminated, varied or altered because of that move (if the person so chooses).

### Recovery of expenses

49. The local authority will be able to recover from the landlord its expenses for work done under section 36 of the 2006 Act, including any administrative expenses, as well as interest charged at a reasonable rate from the date when a demand for payment is served until the whole amount is paid. The local authority may declare that money recoverable is to be paid by instalments. If it does so, it must serve a notice of this declaration on the landlord.

50. The local authority will need to inform the PRHC when it has issued a demand for expenses and when it has received payment, since the landlord may apply to the PRHC for a certificate for completion only when such expenses (if any) have been paid.

### Repayment charges

51. A local authority that is entitled to recover such sums from a landlord may secure money due to it by making a repayment charge, which specifies the repayable amount and the house concerned and charges that house with the repayable amount. A repayment charge must be registered by the local authority in the appropriate land register. Also, a local authority is not precluded from using other methods of debt recovery, such as court action. A repayment charge cannot be made if the landlord does not own the house.

52. The repayable amount that may be secured by a repayment charge is the lowest of the amount the local authority is entitled to recover (including interest), a lower amount set by the local authority and an amount set by Ministers as the maximum repayable amount. (Ministers do not at the moment intend to use the power to prescribe a maximum repayable amount.) The charge will specify the date on which, in each of the subsequent 30 calendar years, an equal annual instalment is to be paid. The owner of the house or anyone with an interest in it may redeem the repayable amount early by paying to the local authority at any time an amount agreed between the owner or other person and the local authority. If they cannot come to an agreement, the amount to be paid in early redemption will be set by Ministers. As soon as the repayable amount is paid off or redeemed early, the local authority must register a discharge of the repayment charge in the land register.

53. The local authority is empowered to enforce a registered repayment charge against the original and any subsequent owner of the house, except someone who acquires right to the property in good faith and for value before registration has taken place and anyone who derives title from such a person. A registered repayment charge has priority over all future burdens and incumbrances on the house and, with some exceptions, existing burdens and incumbrances.

54. Ministers expect to make an order specifying the form of a repayment charge and of a discharge of a repayment charge.

### Appeals

55. If a local authority has decided to use its power under section 36 to carry out work because a landlord has failed, or is unable, to comply with a repairing standard enforcement order (apart from work for which no notice is required), the landlord may appeal to the sheriff. A landlord aggrieved by a decision by a local authority to demand recovery of expenses incurred in carrying out work authorised by section 36 may also appeal to the

sheriff. In each case the appeal must be made within 21 days of the date on which the notice of the proposed work, or demand for recovery of expenses, was served on the appellant. The sheriff's decision on the appeal is final.

### ***Other matters***

#### Contact points

56. In addition to the specific requirements to notify the local authority mentioned above, a PRHC will be required to inform all of the interested parties, including the local authority, of every decision it makes

- on a tenant's application;
- to vary or revoke a repairing standard enforcement order;
- that a landlord has failed to comply with a repairing standard enforcement order;
- to make or not to make a rent relief order;
- to revoke a rent relief order;
- to consent to the landlord entering into a tenancy or occupancy arrangement relating to a house where a repairing standard enforcement order applies; and
- to grant or refuse to grant a certificate stating that the work required by a repairing standard enforcement order has been carried out.

The notice of any decision will be accompanied by a document explaining the decision, a copy of any order or certificate, and a copy of any report considered by the committee.

57. This means that local authorities will be kept fully informed of the decisions of a PRHC. It will obviously be essential for each local authority to establish clear and defined lines of contact with the PRHP for the reception of these documents, and for the contact points within the local authority to be aware of colleagues to whom information should be passed. It would also be useful for a local authority to keep the PRHP informed, eg if it decides to carry out work on a property subject to a repairing standard enforcement order.

#### Landlord registration and accreditation

58. A local authority should ensure that landlord registration officers are informed of all communications from PRHCs. They will want to check that a landlord referred to a PRHC has been approved or has submitted a valid application for registration. Where the local authority becomes aware that a landlord has failed to meet the repairing duty or to comply with a repairing standard enforcement order, it will wish to take this into account in connection with the registration or accreditation of the landlord concerned. If a local authority were to make it clear that it would do this, it could be an incentive for some landlords to comply with the repairing duty, before or after an application was made to the PRHP.

59. The local authority is required to note in its register of landlords where a PRHC has made or varied a repairing standard enforcement order, or consented to the landlord entering into a tenancy or occupancy arrangement relating to a house where a repairing standard enforcement order applies. When an order is revoked or a certificate that the work has been carried out is granted, the information about the order must be removed from the register.

## Housing Benefit

60. It is particularly important that local authority staff dealing with housing benefit are informed immediately that a PRHC has made or revoked a rent relief order, because of the possible implications for housing benefit of the reduction in rent. Depending on the reduction in the rent, housing benefit could be reduced or become not payable at all. Paragraph 6 of Schedule 2 to the 2006 Act specifically entitles a local authority to disclose any notice or document it receives from a PRHC under that paragraph to housing benefit authorities and officers. Local authorities should review their private sector housing benefit procedures to advise staff of the processes they should adopt when they are notified that a PRHC has made or revoked a rent relief order. They should provide appropriate staff training and awareness raising on these procedural changes.

## Local authority as landlord

61. Local authorities will want to check whether any houses in their ownership are covered by the Repairing Standard provisions because they do not fall within the exemptions in section 12 of the 2006 Act. Although the repairing duty does not apply to houses let under Scottish secure tenancies or short Scottish secure tenancies, or to some other categories of tenancy, local authorities may let some houses under tenancies which *are* covered by these provisions. An example might be a house linked to employment. Such landlords are required to meet the Repairing Standard. However, a tenant of a local authority landlord, a registered social landlord, Scottish Homes or Scottish Water cannot apply to the PRHP. Tenants of local authorities and registered social landlords who are covered by the Repairing Standard provisions will continue to have recourse through their landlord's complaints system, if necessary backed up by the Scottish Public Services Ombudsman and the fact of regulation by Communities Scotland.

## **Consequential, saving and transitional provisions and repeals in the 2006 Act**

62. Consequential changes arising from the Act's provisions will replace all references in existing legislation to the Rent Assessment Panel and Rent Assessment Committees with the Private Rented Housing Panel and Private Rented Housing Committees from 3 September 2007.

63. There are transitional provisions so that, if a landlord and tenant have contracted out of the repairing obligations under paragraph 5 of Schedule 10 to the 1987 Act, this will be treated as if they have contracted out of the Repairing Standard under section 18 of the 2006 Act. Similarly, a modification of a lease under paragraph 5 of Schedule 10 to the 1987 Act will be treated as if it is a modification under section 18 of the 2006 Act of the provisions of sections 14, 15 or 17 of the 2006 Act (insofar as those sections are capable of being modified thereby).

64. Section 113 and Schedule 10 (repairing obligations) to the 1987 Act will be repealed, with a saving for enforcement proceedings already commenced in relation to the repairing obligations.

**Housing and Regeneration Directorate  
Scottish Executive  
25 July 2007**

**If you have any enquiries about this guidance, please contact Colin Affleck on 0131-244 5566.**