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Housing renewal areas & repair, improvement and demolition



April 2008

Implementing the Housing (Scotland) Act 2006: DRAFT Advisory Guidance for local authorities

Volume 2

Housing Renewal Areas and Repair, Improvement and Demolition

HOUSING RENEWAL AREAS AND REPAIR, IMPROVEMENT AND DEMOLITION

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| Audience | This part of the guidance is mainly for: <ul style="list-style-type: none">• Local authority private sector housing teams, environmental health and strategic policy staff• Other organisations who may find it useful |
| Purpose | This part of the guidance is intended to: <ul style="list-style-type: none">• Provide an overview of the revised powers to deal with sub-standard housing on an area or individual basis;• Identify issues which local authorities will wish to consider when implementing these new powers; and• Provide some good practice suggestions to help local authorities to implement them. |

SUMMARY

Owners are responsible for looking after their properties. But where this is not happening, the Housing (Scotland) Act 2006 gives local authorities revised powers to deal with sub-standard housing.

Housing Renewal Areas

- These replace the power to designate Housing Action Areas (HAAs).
- Local authorities can designate an HRA where:
 - a significant number of houses are sub-standard; and/or
 - any houses are adversely affecting the amenity of the area.
- This is wider than under the HAA system.

Work notices and demolition notices

- Local authorities can issue work notices and demolition notices to implement an HRA.
- Demolition notices can be used to implement an HRA action plan where a house in serious disrepair ought to be demolished.
- They can also issue a work notice on a house which is sub-standard, whether or not it is within an HRA.
- Work notices replace repairs notices and improvement orders.

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CONSULTATION

This volume of the guidance is non-statutory. It provides advisory information on the new HRA, work notice and demolition notice powers, and highlights some issues which local authorities might wish to consider when implementing the new powers.

We welcome your views on any aspect of this guidance. In particular, you may wish to consider the following questions.

Q1 Will this guidance help you to implement the new powers? Ultimately you will be responsible for interpreting the legislation, but are there any areas which you would appreciate more information on?

Q2 Will the information in Annexes A-D help you to produce the appropriate documents?

Q3 We are proposing to include a Q&A annex of frequently asked questions. This will be developed for the final document, and we propose to update this, as necessary, on the website version of the document. Do you think this would be useful? Are there any questions in particular you would like this to include?

Q4 We are also looking at the possibility of an annex which will set out the various pieces of legislation which a local authority can use to deal with issues of poor quality in private sector housing. Would you support this?

Q5 Any other comments?

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Introduction

1. This guidance covers the new powers under Chapters 1 and 5 of Part 1 of the Housing (Scotland) Act 2006, in relation to Housing Renewal Areas and Repair, Improvement and Demolition. These powers complement the new maintenance powers which are set out in Chapter 6 of the Act (for more information on maintenance please see Volume 3 of this guidance).
2. Chapters 1 and 5 give powers to local authorities to deal with poor quality housing. The main aim is to allow local authorities to take effective action to improve housing condition where owners will not exercise their responsibility – especially where this has an impact on others.
3. This guidance is non-statutory, and is primarily for local authorities. It does not provide a full explanation of the Act, and local authorities should be satisfied in all cases that they are using these new powers within the requirements of the Act. The explanatory notes published with the Act¹ provide a useful overview, but local authorities should seek their own legal advice if unsure of the interpretation of any part.
4. A wide range of other organisations may also find this guidance useful. For example it may help advice organisations when providing information for private owners affected by the new powers. Residents' associations might find it a useful guide to the powers available to the local authority.
5. Communities Scotland has developed this guidance in conjunction with a Project Advisory Group. Details of the membership are available in Volume 1, and you can access notes of the meetings via our website, at www.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/cs_016362.hcsp.
6. Local authorities should ensure that they eliminate unlawful discrimination, promote equality of opportunity and observe the requirements of relevant equalities legislation at all times when exercising the new powers under this Act.

¹ www.opsi.gov.uk/legislation/scotland/en2006/2006en01.htm

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Structure of Guidance

7. There are four main chapters in this guidance:

Chapter 1 provides background to the new powers to help local authorities deal with housing which is sub-standard or affecting the amenity of an area.

Chapter 2 provides more information on when housing is sub-standard or adversely affecting the amenity. It also outlines the new Housing Renewal Areas (HRA) and work and demolition notices, and looks at the use of these and other existing powers.

Chapter 3 provides further information on the new area-based powers, HRAs.

Chapter 4 deals in detail with work and demolition notices. Local authorities can use these to enforce HRAs, or use work notices on their own to get work done on individual houses.

8. There are also four annexes which provide some advice to local authorities for designing certain documents:

Annex A HRA Designation Order

Annex B HRA Action Plan

Annex C Work Notice

Annex D Demolition Notice

9. And there are three annexes which look in more detail at some of the technical requirements which relate to Part 1 Chapters 1 and 5 of the Act:

Annex E Service Of Documents

Annex F Appeals

Annex G Recovery Of Expenses And Repayment Charges

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Chapter 1 Background

- 1.1. Local authorities currently have powers under the Housing (Scotland) Act 1987 to make owners deal with poor quality housing. They can designate a Housing Action Area where the majority of housing is below Tolerable Standard (BTS). They can serve improvement orders to deal with individual BTS houses, or repairs notices for housing in serious disrepair. Local authorities must then provide grant assistance to help carry out works required by these notices or orders.
- 1.2. The 2006 Act replaces these powers with Housing Renewal Areas (HRAs), work notices and demolition notices.
- 1.3. The Housing Improvement Task Force² was set up in December 2000 to consider the whole question of private sector housing condition. One of the things it pointed out was the lack of effective powers to deal with disrepair that is not yet serious. These new powers help to tackle this, and give local authorities more flexibility in dealing with poor quality housing and ensuring that work is carried out. This applies both to individual houses and to dealing with issues on an area basis.
- 1.4. The 2006 Act also introduces new powers for local authorities to require owners to set up and carry out a maintenance plan for their properties in certain situations. Further information on this is available in Volume 3 Maintenance.
- 1.5. Owners have primary responsibility for keeping their houses in good condition, although local authorities should consider what assistance they will provide to help them to do this. In most cases this will be at the authority's discretion. But if it serves a work notice it will have to provide assistance (such as advice, a loan or a grant) in terms of the Scheme of Assistance it develops under Part 2 of the 2006 Act.
- 1.6. This is a change from the arrangements under the 1987 Act where the local authority had to provide grant assistance after serving a notice. Further information on the new arrangements is available in Volume 5 Scheme of Assistance. Local authorities should also note that their Scheme of Assistance cannot apply where they have served a demolition notice.
- 1.7. This means that local authorities will have more powers to deal with poor quality housing, and more choice in how to support owners to undertake the work needed.

2

www.scotland.gov.uk/Topics/Housing/Housing/16193/PolicyandLegislation/HousingImprovementTask

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- 1.8. Local authorities will also have to set out how they will identify potential Housing Renewal Areas in their Local Housing Strategy (LHS). For more information see paragraphs 3.11-3.14.
- 1.9. There will be transitional arrangements to allow local authorities to move from the powers under the 1987 Act to those under the 2006 Act. For more information see Volume 1 Preparing and Delivering (paragraphs 1.26-1.29).
- 1.10. Local authorities will continue to have powers to serve closing orders and demolition orders under the 1987 Act. They can serve these notices on properties which are BTS and which ought to be demolished.

Other powers

- 1.11. As well as the powers under the 1987 Act, there is other legislation which helps with issues of housing quality. For example, local authorities can use the Building (Scotland) Act 2003 to deal with dangerous buildings. The Tenements (Scotland) 2004 Act sets out responsibilities of owners for maintaining and managing their properties where their title deeds are silent or unclear on this point.
- 1.12. It may be that local authorities have been using this other legislation as well as, or instead of, the 1987 Act powers to deal with housing issues. These other powers will continue to be available to local authorities. Once the new HRA, work and demolition notices are available for use, authorities will need to consider what the most appropriate power, or combination of powers, is to deal with each situation.
- 1.13. Local authorities will wish to keep up to date with relevant case law or precedents around the various pieces of legislation. This may help to inform decisions as to which powers it is most appropriate for them to use.

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Chapter 2 Sub-standard Housing, Local Amenity And Use Of Powers

- 2.1. This chapter looks at the key terms local authorities will need to understand in order to apply the new powers. It also offers some good practice suggestions for using these powers.
- 2.2. Local authorities will find it useful to familiarise themselves with these terms before considering whether to use HRAs or work notices. They might also wish to consider the tie-in to issues of maintenance, as set out in Volume 3 Maintenance.
- 2.3. There are two situations where local authorities can use the new enforcement powers to deal with poor quality housing. These are where:
- housing is sub-standard, to bring it into and keep it in a reasonable state of repair (which must at least meet the tolerable standard); or
 - the appearance or state of repair of houses is adversely affecting the amenity of the area, to enhance it.
- 2.4. This is wider than under the previous powers. Authorities could use Housing Action Areas (HAAs), repairs notices and improvement orders only where a house was below the tolerable standard (BTS) or in serious disrepair.
- 2.5. Local authorities will be responsible for deciding whether either of the situations described in paragraph 2.3 applies to a house. In some cases there will be factual evidence, for example where the authority identifies a house as failing the tolerable standard for demonstrable reasons. But other decisions will by nature involve a degree of subjectivity, for example as to whether the number of sub-standard houses is “significant”.
- 2.6. It will therefore be important to engage with owners, tenants and any other interested parties from an early stage. This will help gauge support for these decisions, and help inform whether the proposed action is appropriate. There is further information on formal consultation requirements in Chapter 3 paragraphs 3.88-3.94.
- 2.7. Local authorities may identify these houses themselves, or owners/property managers and tenants may contact the authority to advise them of a problem. It will be up to the local authority to determine how it prioritises cases.
- 2.8. Local authorities will also need to determine what the most appropriate route is to deal with each case. It would be good practice in the first instance to encourage voluntary action by providing assistance. Failing this, authorities will want to consider whether they want to take statutory action, and what form of action to take, for example whether to use HRAs, serve work notices or use other powers, such as under environmental health legislation. See also paragraphs 2.49-2.62.

s1

1987
Act

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Sub-standard housing

s68 (1)

- 2.9. A house is sub-standard if it is:
- below the tolerable standard;
 - in a state of serious disrepair; or
 - in need of repair and is likely to deteriorate rapidly or damage other premises if nothing is done to repair it.

s68 (2)

- 2.10. The local authority should not look at the age, character, location or decoration of a house when considering whether it is sub-standard against any of these elements. Internal decoration was not a factor under the 1987 Act either in relation to the Tolerable Standard or disrepair.

House

s194
(1)

- 2.11. A house is any living accommodation which is, or which is capable of being, occupied as a separate dwelling. For example, in a common stairwell or close this would include any flats which have been lying empty or which owners use as holiday accommodation. These powers do not apply to mobile homes³ or any other living accommodation which is not a building (for example a house boat).

- 2.12. Local authorities may be familiar with the term “building” under the Building (Scotland) Acts, where essentially a building is a structure permanently built on foundations rather than a moveable structure. There is no definition of “building” in the 2006 Act, so it will be up to local authorities to decide in each case whether the 2006 powers will apply.

s194
(1)

- 2.13. It is worth noting that the definition of a “house” in the Act includes facilities or areas which are communally owned, as well as other related areas, such as gardens or out-houses. So local authorities can use the new powers to deal with problems with, for example, stairwells, bin stores, roofs, gardens, drying greens, back courts, yards, garages or outhouses.

- 2.14. Local authorities will want to consider whether problems with these related areas are enough to trigger statutory action under the 2006 Act. It may be that there are other routes which the local authority could use. This might include providing assistance, using maintenance orders (under Chapter 6 of the Act – see guidance) or using other powers, such as under environmental health legislation. Or it might be appropriate to use the 2006 Act to deal with these issues when others to do with the house have been identified.

s69

- 2.15. Sub-standard housing might be in a building which contains non-residential premises, for example where there is a shop on the ground floor of a tenement block. Local authorities can use the new powers to deal with the

³ Part 6 of the 2006 Act refers to mobile homes.

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non-residential premises, but only if the work is needed to deal with the sub-standard housing. If the housing in the block is not sub-standard the local authority cannot use these powers to deal with poor quality in the ground floor shop on its own. This is the same as for repairs notices under the 1987 Act.

- s193
- 2.16. Local authorities will also wish to note that the 2006 Act binds the Crown. This means that they no longer need the consent of the Crown before serving a notice on a house which it owns, for example on Ministry of Defence housing. This is a change from the situation for improvement orders under the 1987 Act.

Tolerable Standard

- Ch 3
- 2.17. The tolerable standard is the minimum standard a house should come up to. The 2006 Act updates the definition of the tolerable standard by adding criteria for thermal insulation and electrical installations.

- 2.18. We have worked with an expert group to produce statutory guidance on the application of each element of the tolerable standard. For more information see Volume 4 Tolerable Standard.

- s11(3)
(1A)
- 2.19. Local authorities should have regard to this guidance, although interpretation of the law is for the local authority as enforcing authority and for the courts.

- s68
- 2.20. A house which is BTS is sub-standard for the purposes of this Act.

Serious Disrepair

- 2.21. Local authorities are responsible for determining whether a house is in a state of serious disrepair. This is the same as when dealing with repairs notices under the 1987 Act. Neither the 1987 Act nor the 2006 Act defines “state of serious disrepair”.
- 2.22. Authorities will want to be able to demonstrate that they have made a reasonable judgement in deciding that the disrepair is “serious”. The authority will need to be consistent in the way it makes such judgements, or it may be difficult to justify a decision if owners or residents challenge it. It would be sensible for local authorities to develop a suitable framework for use by their staff.
- 2.23. Local authorities are already working with the concept of “serious disrepair” in relation to the Scottish Housing Quality Standard (SHQS). The Scottish Government requires local authorities and Registered Social Landlords (RSLs) to ensure that all rented housing they own meets this standard by 2015.

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- 2.24. There is no requirement for private housing to meet the SHQS. However, local authorities might wish to consider taking account of the SHQS definition of “serious disrepair” when deciding whether a house is sub-standard.
- 2.25. The Scottish Government has issued guidance to local authorities on the SHQS. This provides further information on when a house should not be considered to be free from serious disrepair. The guidance letter, and subsequent clarification, are available at www.scotland.gov.uk/consultations/housing/msshletter.pdf and <http://www.scotland.gov.uk/Resource/Doc/47060/0028724.pdf>.

In need of repair

- 2.26. A house is sub-standard if it is in need of repair and is likely to deteriorate rapidly or damage other premises if nothing is done to repair it. Under the 1987 Act local authorities could treat houses in this situation as though they were in serious disrepair, and serve repair notices on them to get them fixed.
- 2.27. There is no definition in the Act of when a house is in need of repair. The local authority is responsible for deciding whether this applies to houses in its area.
- 2.28. The HRA designation order and subsequent work notice will identify a house as being sub-standard. It will be up to the local authority to decide whether the order and/or notice will also distinguish between the house being BTS, in serious disrepair or in need of repair (see also annexes B and C). But in any case, it will be good practice for the local authority to develop a consistent approach to assessing a house as being in need of repair. This will be important if an owner challenges the local authority’s decision to identify their property as needing work.
- 2.29. Again, the local authority will want to satisfy itself that the 2006 powers are the most appropriate way to deal with the problem. Other relevant legislation might include the Building (Scotland) Act 2003.

Link to the Scottish House Condition Survey

- 2.30. Local authorities will be responsible for determining whether a house meets the criteria for being sub-standard. The Scottish House Condition Survey⁴ (SHCS) provides national and localised analysis of physical quality, including detailed reporting on housing disrepair issues. The SHCS team in the Scottish Government intends, during 2008, to review how it reports on

⁴ The Scottish House Condition Survey (www.shcs.gov.uk) is the national survey that examines the physical condition of Scotland’s homes. The SHCS team publishes periodic survey findings on a wide range of house condition issues as well as the experiences of householders.

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disrepair, with a view to aligning the terms used with those used in the 2006 Act.

Appearance or state of repair of house adversely affecting the amenity of the area

s1
(b)

2.31. Local authorities will have a new power to deal with housing which may not be sub-standard, but whose appearance or state of repair is affecting the amenity of an area.

2.32. This is likely to be the most subjective decision local authorities will make in terms of housing quality. There is a wide range of situations where this could apply. It may be that a variety of factors add up to any houses affecting the amenity, for example where there is a house with overgrown gardens, rubbish in a front yard looking onto the street and peeling paintwork. Local authorities might also want to consider whether the area in question is subject to a wider regeneration strategy or masterplan.

s68
(2)

2.33. There are restrictions to what local authorities can take account of when deciding whether a house is sub-standard (see paragraph 2.10). These restrictions do not apply when deciding if any houses are affecting the amenity of the area.

2.34. Local authorities are more likely to base decisions under this category on their subjective impression of the house within the area, rather than identifying the quality of the house as somewhere to live. It will be very important to ensure a consistent approach within the local authority as to how it makes these decisions. It would be sensible for authorities to agree a framework for such decisions for their staff to work within, to ensure that their decisions are reasonable. Local authorities might also find it useful to develop a practitioners' network so that they can share their experiences with other authorities.

2.35. For example, authorities may wish to take account of residents' views on the impact of the houses on their locality. They might want to seek experts' views on the effect on house valuations, or consider gathering evidence to compare these houses to other houses in the area.

2.36. Local authorities can designate an HRA wherever a locality meets the criteria set out in the Act (Chapter 1 section 1). But it would be good practice for local authorities to ensure that their response is proportionate. For example, it might be appropriate to designate an HRA where there is a strong view that there is a real problem for the area and that there would be unacceptable consequences for the community if the authority did not step in.

s95

2.37. Chapter 1 gives local authorities powers to deal with housing which is adversely affecting the amenity of an area (see paragraphs 2.11 to 2.16 for the definition of "house"). These powers do not extend to entirely non-

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residential premises. But local authorities do have separate powers to deal with such premises or land which are affecting the amenity of a predominantly residential area. These are set out in s95 (for more information see Chapter 3 of Volume 5 Scheme of Assistance).

Housing identified - what now?

Information, Advice and Guidance

- 2.38. Local authorities should consider what support or assistance they provide throughout the process of identifying and dealing with poor quality housing. If the local authority has identified a problem, it would be good practice for it to contact the owner or occupier in the first instance to ensure they are aware of it. Alternatively it may be that owners themselves have brought the problem to the local authority's attention.
- 2.39. In either case it would be good practice for local authorities to provide assistance to encourage owners to get the work done. It will be important to ensure that owners are aware of their rights under the new legislation, as well as their responsibilities.
- 2.40. If this doesn't work, local authorities can use the new enforcement powers. Again, the authority should continue to consider what assistance it will provide if this happens.
- 2.41. Local authorities should consider any equalities issues when making any contact. This would include written correspondence or visits in person. In particular, local authorities should be able to accommodate translation and interpretation services and any need for information in different formats.

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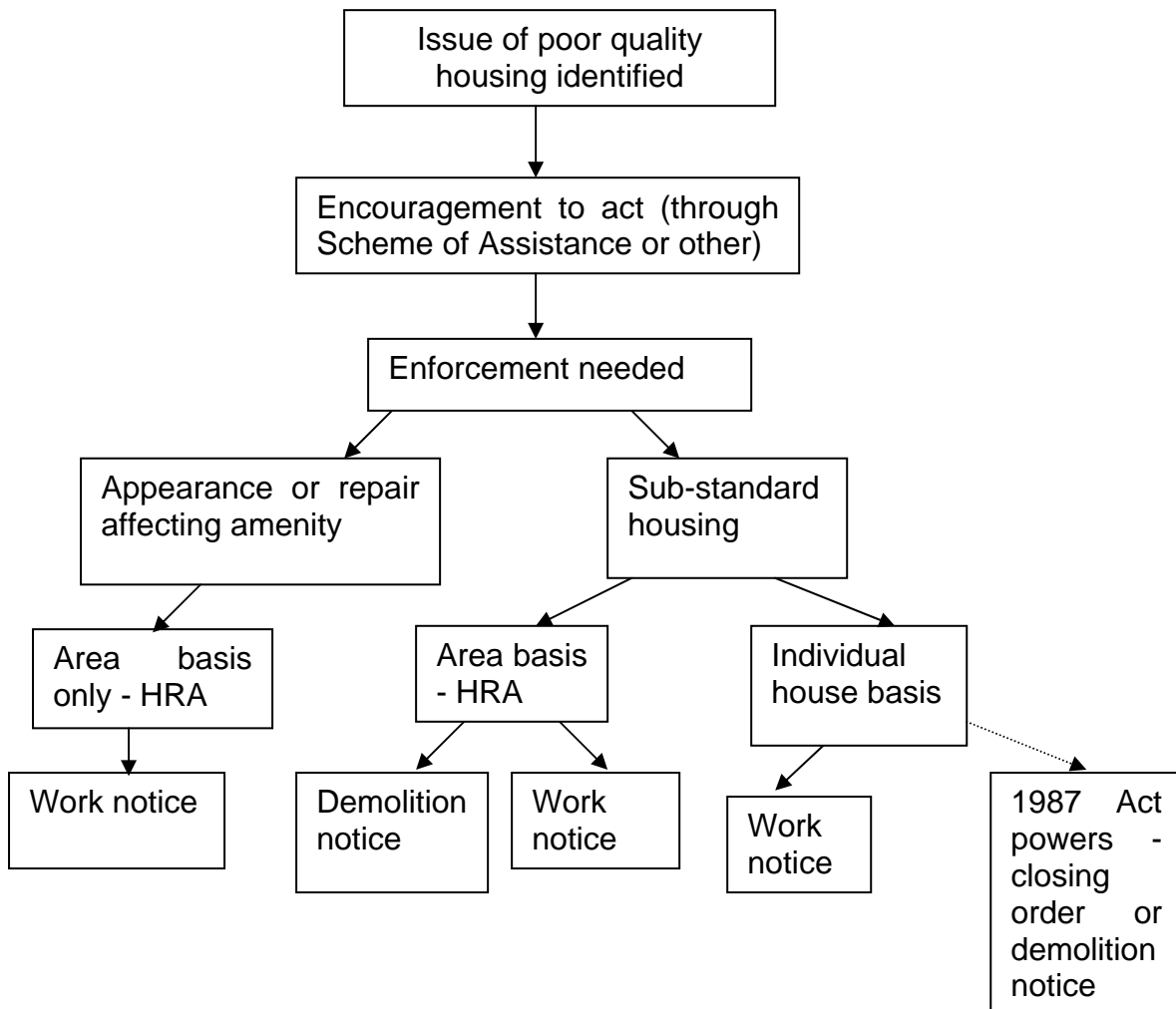
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New powers

Ch
1, 5

2.42. The Act introduces new enforcement powers, where local authorities need to deal with poor quality housing, through Housing Renewal Areas (HRAs), work notices or demolition notices. The following flowchart summarises this:-



s1(b),
s30
(1)(a)

2.43. Local authorities can use HRAs where any houses are adversely affecting the amenity of the area, to enhance it. They can then serve work notices on the owners of housing in the area to enforce the HRA action plan.

s1 (a),
s30
(1)(a)

2.44. Local authorities can designate an HRA where a significant amount of housing in the area is sub-standard, to bring the housing up to and keep it in a reasonable state of repair, or to remove it by demolition if necessary. The local authority can serve work or demolition notices on the owners to carry out the work which the HRA identifies.

2.45. An HRA can also be set up to deal with both a significant amount of sub-standard housing and housing which is affecting the amenity of the area.

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s30
(1)(a)

- 2.46. Local authorities can serve work notices on individual sub-standard houses outwith HRAs, to bring them up to and keep them in a reasonable state of repair. They will also continue to have powers under the 1987 Act to issue closing or demolition orders to deal with BTS housing that ought to be demolished.
- 2.47. The new powers help local authorities deal with problems in private housing. But there is nothing to stop local authorities using the new powers to deal with poor quality housing issues in other tenures, for example houses owned by Registered Social Landlords (RSLs).
- 2.48. There is further information on HRAs in Chapter 3, and on work and demolition notices in Chapter 4.

Use of powers

Area basis (HRAs) or individual houses (work notices)

- 2.49. Once the local authority has identified sub-standard housing, it may need to consider whether it is more appropriate to deal with the problem on an area basis by designating an HRA, or to go straight to issuing work notices on individual houses. In doing this, one factor that local authorities will wish to consider is if and how an area-based HRA supports and/or complements broader plans for regeneration.
- 2.50. There will be a number of factors to consider in each situation, in terms of what the issue is, how much housing is affected, and resource implications. There may be less administration for local authorities in issuing individual work notices rather than designating an HRA. But HRA action plans and the work notices that support them can cover matters that a work notice issued separately for an individual house cannot include, such as improving safety and security (see Chapter 4 for more information).
- 2.51. If the local authority has identified a house for demolition, it will need to consider why it made that decision. For example, if it is because the house is in a state of serious disrepair, the local authority would need to deal with the house as part of an HRA – it can only serve demolition notices on houses within an HRA. If a building needs to be demolished because it is BTS, then the local authority could issue a closing or demolition order under the 1987 Act.
- 2.52. A local authority might have identified an area where the appearance or state of repair of any houses is adversely affecting its amenity. If it wanted to deal with this under the 2006 Act rather than another power (see paragraphs 2.57-2.62), it would have to designate an HRA, and then use work notices to implement it. This is because a local authority cannot use a work notice to deal with amenity issues on houses outwith an HRA.

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- 2.53. In all cases it will be up to the local authority to decide what the most appropriate route is to deal with issues of poor housing quality.
- 2.54. The 2006 Act extends the scope of the existing local housing strategy⁵ (LHS). Local authorities will have to set out how they intend to identify parts of their area for designation as HRAs as part of their Local Housing Strategy (LHS)⁶. Separate detailed guidance is available to assist local authorities with their LHS duty⁷. We are currently updating the guidance to reflect the priorities of the new Government and changes to legislation since its original publication in 2003. The updated version of the guidance will be available in due course.
- 2.55. There is no requirement under the Act for authorities to designate a certain number of HRAs. Local authorities will want consider their use of HRAs based on their local circumstances, for example taking account of the scale of the work involved in establishing the HRA.
- 2.56. The designation of an HRA and associated works might form an important element of wider regeneration or development plans for an area. Local authorities will wish to consider if and how a proposed HRA fits with these plans, and the timing and phasing of wider development.

2006 Act or other legislation?

- 2.57. Local authorities may have been dealing with private housing quality issues without designating HAAs and/or serving notices or orders, for example by using other legislative powers.
- 2.58. The new powers in Chapter 1 and 5 of the 2006 Act provide more flexibility to deal with poor quality housing than was available under the 1987 Act. These powers will sit within the wider context of legislation available to the authority.
- 2.59. The local authority should continue to assess what the most appropriate route is to deal with the issues it has found. This may be the new powers under the 2006 Act, other legislation, or a combination of the powers where there are multiple problems.
- 2.60. Part of this might include a consideration of the urgency of the problem. If a house is in such a state of serious disrepair that it is dangerous then it might be more appropriate to deal with it under Building (Scotland) Act 2003 rather

⁵ Section 89 of the Housing (Scotland) Act 2001 introduced a duty on local authorities to prepare a local housing strategy.

⁶ The new LHS duty also covers the tolerable standard and the scheme of assistance. Our guidance on these topics provides further information on the new duties.

⁷ The guidance is web-based and will be available via the Scottish Government's website: www.scotland.gov.uk

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s71
s73

than serving a work notice. There might also be issues around the availability of support for owners. There may be different support available under environmental health or planning powers, whereas Scheme of Assistance can apply to HRAs and must apply to work notices.

- 2.61. Whatever route the local authority takes to deal with issues it has identified, it should think about what action it will need to take to ensure that the improvements to the area are sustainable. For example, this might include providing information or advice to owners on how to maintain their property in the future.
- 2.62. Local authorities will have new powers under the 2006 Act to issue maintenance orders where owners have not maintained, or are unlikely to maintain, their properties to a reasonable standard. This can include where the benefit of a work notice has been lost due to a lack of maintenance. For more information see Volume 3 Maintenance.

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Chapter 3 Housing Renewal Areas (HRAs)

- 3.1. This Chapter provides more information on Housing Renewal Areas (HRAs). It highlights some of the key differences between these and Housing Action Areas (HAAs). It provides guidance on circumstances in which local authorities can designate an HRA, and looks at the various stages to go through to do this. This is the legislation set out primarily in Part 1 Chapter 1 and Schedule 1 of the 2006 Act.

- 3.2. Annexes A and B summarise the legislative requirements for the HRA designation order and HRA action plan. They also highlight further information and issues which the local authority may wish to consider when designing these documents.

Overview

- 3.3. Housing Renewal Areas are the new powers to deal with poor quality housing issues on an area basis. They replace the previous arrangements to designate Housing Action Areas, and local authorities will have more flexibility in when they can use them.

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3.4. The table below summarises the main differences between HRAs and HAAs.

| | HAA – 1987 Act | HRA – 2006 Act |
|--|---|---|
| Types | Three – <ul style="list-style-type: none"> • for improvement (s90); • for demolition (s89); or • for improvement & demolition (s91). | One (s1) - although can be due to sub-standard housing and/or housing affecting the amenity of an area. HRA to require works or demolition to improve these issues. |
| Situation | More than 50% BTS / lack standard amenities; others must be in disrepair. | <ul style="list-style-type: none"> • Significant number are sub-standard; and/or • Any houses are adversely affecting amenity of area. |
| Purpose | Demolition – demolition of housing, excluding commercial premises or buildings where no BTS housing. Improvement – meet TS and be in good state of repair (excluding internal decorative) with regard to age, character and locality. Demolition and improvement. | <ul style="list-style-type: none"> • To bring houses up to, and keep in, a reasonable state of repair (including meeting Tolerable Standard). • To carry out work to a house for the purposes of enhancing the amenity of the area. |
| Implementation | Enforcement on basis of confirmed HAA resolution. No direct link between HAAs and serving individual notices. | Enforcement requires individual work notices or demolition notices. |
| Assistance | No direct link between designating HAA and providing assistance. Mandatory grant for individual BTS. | Mandatory assistance under Scheme of Assistance arrangements where work notice served. Otherwise assistance discretionary. See statutory guidance. |
| Consultation | 2 months and following public and individual notification. | Minimum 3 month before submitted to ministers. |
| Clearance by Scottish Ministers | Check properly made. Check justified and appropriate in light of consultation. | Assessment by Scottish Ministers, including possibility of further consultation. |
| Revocation | Local authority can rescind it before it makes it. Otherwise no specific provision for revocation. | Where action completed, circumstances change or Scottish Ministers direct. |

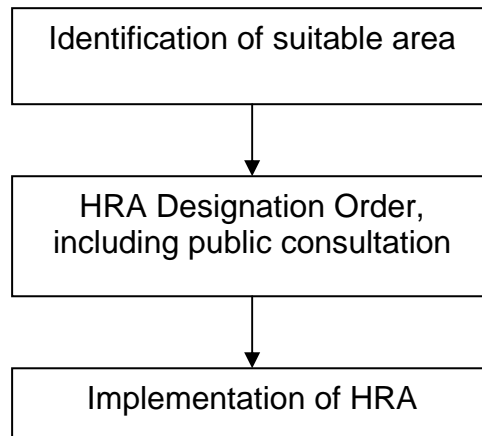
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3.5. Housing Action Areas which Scottish Ministers have approved prior to the repeal of the HAA power will continue to apply (see also paragraph 1.9 for information on transitional arrangements), as will any grants which local authorities have awarded under that system.

Using the HRA powers

3.6. Setting up an HRA involves three main stages –



Identification of suitable area

Introduction

s1

3.7. Local authorities can designate an HRA on either or both of the following grounds:

- where a significant number of the houses are sub-standard, or
- where the appearance or state of repair of any houses is adversely affecting the amenity of the area (see Chapter 2 for more information on “sub-standard” and “amenity”).

3.8. This gives local authorities more scope than under the HAA system. Local authorities could only designate an HAA where more than 50% of housing was BTS or lacking standard amenities.

s3
(1)

3.9. Designating an HRA lets a local authority secure an improvement in the condition and quality of housing in the HRA. This may be through carrying out works to, or demolition of, houses.

3.10. A local authority might designate an HRA on a locality because it contains housing under both categories in paragraph 3.7. Or it might designate an HRA for one reason, but be able to deal with housing under the other criteria at the same time. For example, an authority might designate an HRA on grounds of amenity on an area which also contains several sub-standard houses. The authority might not take the view that this number is “significant” enough to designate an HRA. But it might want to consider with

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its legal advisors whether it could deal with the sub-standard houses as part of the HRA action plan if it has designated the HRA on amenity grounds.

Identifying potential areas: Local Housing Strategies

Ch 2
s10

- 3.11. Local authorities must set out their strategy for identifying HRAs in their LHS. The 2009 LHS submission will be the first to include this new requirement, but local authorities can designate an HRA before they submit their 2009 LHS. It would be good practice for local authorities to have at least a provisional policy before doing so though. Local authorities are expected to have undertaken an equality impact assessment of the final policy. There are legal requirements to cover disability, gender and race⁸. The Scottish Government, however, promotes a six equality strand approach to equality impact assessment, to also cover age, religion and belief, and sexual orientation.
- 3.12. The Act does not specify what the strategy should contain. The content will be a matter for each local authority. But there are issues that will be relevant for all authorities. The following bullet points summarise some of these.
- Identifying areas: the policy should set out how the local authority will actively identify housing quality problems on an area basis.
 - Scale and nature of problems: a successful strategy needs to be built around a clear understanding of the scale and nature of local housing quality problems. Our own research indicates that many local authorities do not currently have a thorough knowledge of private sector house condition⁹. So, establishing reliable baseline information may be an important early step in developing the strategy. We have produced separate guidance (Volume 1 Chapter 5 “Gathering the Evidence”) to assist local authorities to gather and manage house condition data effectively. Authorities may find it useful for their work on HRAs.
 - Clear criteria: authorities should have clear criteria for identifying an area as a potential HRA, and should declare these criteria so that decisions are open, consistent and defensible.
 - Resources: authorities should base their strategies on a realistic assessment of the staff and funding available to support individual HRAs.

⁸ Race Relation (Amendment) Act 2000, Disability Discrimination Act 2005, Equality Act 2006.

⁹ Implementation of the 2006 Housing (Scotland) Act: Skills & Resource Audit for Local Authorities, Arneil Johnston, July 2007. Available at

http://www.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/otcs_019773.pdf

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- Other powers: authorities may also want to consider the circumstances in which it would be more appropriate to use other powers to achieve area-based improvement, rather than designate an HRA in a locality.
 - Co-ordinated approach: issues of poor housing quality are usually interlinked with social and economic issues. Local authorities should ensure that they join up with other policies and agencies when identifying potential HRAs. This might include Community Planning partners, regeneration interests, or using social data such as deprivation statistics or local surveys.
- 3.13. Issues of poor housing quality are usually interlinked with social and economic issues. Local authorities should ensure that they join up with other policies and agencies when identifying potential HRAs. This might include Community Planning partners, regeneration interests, or using social data such as deprivation statistics or local surveys. Local authorities should also consider any cultural or other sensitivities in relation to the communities living in those areas it has identified.
- 3.14. There is more information on these requirements in the LHS guidance (see paragraph 2.54). Local authorities will also find it useful to consider Volume 1 Chapter 5 “Gathering the Evidence”.

Assessing the housing

- 3.15. Local authorities may be aware of potential HRAs through their own records of housing quality. Or owners may come to the local authority to ask it to deal with issues in their area. Local authorities may also want to consider the role property managers might play in identifying potential houses, as they will have a working knowledge of the stock they manage.
- 3.16. Local authorities have rights of entry to land or premises (including adjacent land and premises) at any reasonable time for deciding whether it is appropriate to designate an area as an HRA. They should give notice at least 24 hours in advance if they intend to access the land or premises, unless the situation is urgent or if giving such notice would defeat the purpose of the visit. Any person who the local authority authorises to do this must be able to produce written evidence of authorisation.
- 3.17. Local authorities will have to determine whether an HRA is the best way to deal with issues which they or owners have identified. Issues they may wish to consider include:
- whether the issues in paragraph 3.7 apply;
 - whether it is appropriate to deal with sub-standard housing on an area basis, rather than just serving work notices (see Chapter 2 paragraphs 2.49-2.56 for more information);

s182
s184

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- whether encouraging voluntary action will work; and
- whether there are other powers which they could more appropriately use instead of, or as well as, the HRA approach. For example, local authorities can require demolition of individual houses for reasons other than serious disrepair through other legislation. They can also use other powers, such as nuisance orders, to deal with some issues of appearance and state of repair affecting the amenity of an area.

- 3.18. A number of local authority departments might have an interest in the decision whether to use HRAs or other routes. Local authorities will want to ensure they involve all the relevant departments when determining how and whether to use the new powers (for example regeneration, environmental health).
- 3.19. They might also want to consider how they will consult with other relevant local stakeholders. This might include RSLs, the police and communities themselves.
- 3.20. An advantage of the HRA approach is that local authorities can coordinate their responses to deal with a wide range of issues. They also have powers to carry out the work where owners do not, and to recover the costs for this (see Chapter 4). See also paragraphs 2.49-2.62 of Chapter 2 for further discussion on the use of appropriate powers.

Criteria for an HRA - Sub-standard

- 3.21. Chapter 2 provides information on when a house is sub-standard.
- s1(a) 3.22. To designate an HRA on grounds of substandard housing, a local authority must consider that a “significant number” of houses in the area are sub-standard. This is different from the HAA system which required there to be a majority of housing in the area which was BTS or lacked standard amenities.
- 3.23. The 2006 Act does not define “significant”, so local authorities will have more flexibility in using the area powers. But this also means the assessment will be more subjective and more open to challenge. It will be important for local authorities to ensure that they have evidence to back up their decisions. They should also ensure they consult with residents and owners from an early stage (see paragraphs 3.88-3.94 on consideration of draft orders).
- 3.24. It will be up to the local authority to determine whether there is a significant number of sub-standard houses in the area. It should seek its own legal advice to determine when to take this view. For example it might wish to consider whether appropriate situations would be where:
- a majority of the houses are sub-standard;

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- fewer than half the houses are sub-standard, but the local authority considers that these are significantly affecting values or marketability of existing or planned housing in the area. Local authorities should have evidence supporting this from professionals in housing values; or
- fewer than half the houses are currently sub-standard but there is evidence that this proportion is increasing.

3.25. By designating an HRA, the local authority can deal with sub-standard housing whether it requires work or demolition (see paragraph 3.56-3.88 on the HRA action plan for more information).

Criteria for an HRA - Amenity

- s1(b)
- 3.26. If the appearance or state of repair of any houses is adversely affecting the amenity of an area, local authorities can designate that area as an HRA.
- 3.27. Chapter 2 provides more information on this criterion.
- 3.28. Potentially a local authority can designate an HRA if there is at least one house which it considers to be adversely affecting the amenity of the area. But if the problem relates to only a small number of houses, local authorities will want to consider whether designating an HRA on that locality is the most appropriate way to respond. There may be other ways to deal with it, for example through nuisance orders or other environmental health powers.
- 3.29. An HRA might be appropriate if there are quite a few houses in this situation, or if the local authority has been unable to deal with the houses by taking action against them individually in the past, rather than on an area basis. It would also give the local authority scope to pick up these sorts of issues when dealing with sub-standard housing in the same area, by setting up an HRA which can then tackle a range of problems, from sub-standard housing through to amenity issues.
- 3.30. An assessment of whether a house's appearance or state of repair is adversely affecting the amenity of the area may be quite subjective. Local authorities will want to ensure they have sufficient evidence to support their decisions. They will also want to consult residents from an early stage to ensure they take account of residents' views.
- 3.31. Local authorities should also ensure that they have sufficient evidence to support the decisions they have made. This might include, for example:
- comparison with other examples;
 - professional opinion on value/marketability of houses in the locality, to show that the house in question is affecting this;
 - if there are a number of neighbouring empty houses which might be attributed to the state of the house in question;

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- professional opinion on the appearance of the house, for example from planners or surveyors; or
 - relative impact of the house on the area. This could be shown using digital photography to show the current view and what the area would look after work on the house.
- 3.32. A local authority should be considering what the consequences would be if it did not designate an HRA on the grounds of amenity where it considers the area will decline and/or there will be increased market failure if nothing is done.
- 3.33. Local authorities can carry out, or assist with, work to any land or premises in a predominantly residential area under s95 of the Act. But they cannot use these powers in relation to any house, or any part of a building which can be occupied. For more information see Chapter 3 of Volume 5 Scheme Of Assistance.

How big is an HRA?

- 3.34. The Act does not specify the size of an HRA, other than to state that this should be a locality in the local authority's area. The authority should take account of this when deciding what to include in an HRA. In any case the HRA must contain a significant number of substandard houses or any houses which are adversely affecting the amenity of that locality.
- 3.35. Local authorities will want to consider what is most appropriate to deal with the poor quality housing they have identified. Factors might include what the problems are, and what resources are currently available to take the work forward.
- 3.36. If there are two or three closes in a row of tenements with the same problems then it might be appropriate to designate a single HRA that includes each of them. This might give a more coherent approach to the works being undertaken, especially if there are benefits or economies from doing works on all the tenements at the one time. For example, the HRA could require the improvement of all the back areas together, or enable scaffolding to the whole building so that other desirable works can be done more economically than would otherwise be the case. But the HRA cannot force owners to act together.
- 3.37. If, on the other hand, local authorities are looking to deal with housing across a large area which includes a variety of issues, they may decide that phasing several smaller HRAs over time would work better than a single large HRA.
- 3.38. The appropriate scale depends on the situation. It may not be practical to designate an HRA on a large urban area or an area smaller than a city block. But in a rural setting it may be appropriate to designate a

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geographically larger area as an HRA, if this allows concerted action to help deal with housing decline in a dispersed community. In all cases the local authority should consider whether the HRA will constitute a “locality”.

- 3.39. Ultimately it will be the local authority’s decision depending on what is practical. Local authorities will want to be working with people the HRA will affect, such as house owners, local businesses (if applicable) and the wider community, right from the start of the process to ensure support for whatever approach they take.

What can an HRA include?

s1

- 3.40. The HRA should be dealing with sub-standard housing or housing affecting the amenity of the area.

s69

- 3.41. An HRA can include non-residential premises. The HRA action plan can specify work or demolition to these premises. But it can do this only if the non-residential premises are in a building which contains sub-standard housing or housing which is affecting the amenity of the area. And the work or demolition must be necessary in order to deal with that housing. See Chapter 2 for information on non-residential premises, and paragraphs 3.56-3.87 for more information on the HRA action plan.

- 3.42. An HRA can also include entirely non-residential premises where these are part of the locality, or those in a building which does not contain sub-standard housing. But the action plan cannot specify any work or demolition for these premises, as the new powers will not apply to them. This is different to the previous powers where an HAA could only include buildings which contained houses that met the criteria to trigger an HAA – entirely non-residential premises could not be within an HAA.

- 3.43. Although the action plan cannot specify any work to entirely non-residential premises, local authorities will wish to consider what they and other agencies can do to promote the improvement and viability of such premises.

- 3.44. There might be housing in an HRA which is not sub-standard or affecting the amenity of the area. Again the HRA action plan will not specify any work or demolition to these buildings, unless it is necessary due to work on an adjacent property.

Other points to note

s6

- 3.45. Local authorities must take account of any directions which Scottish Ministers issue on identifying HRAs. These can be individual or general. There are no such directions as of [*insert date of publication of guidance*]. We will publish any directions and incorporate this into the web version of this guidance.

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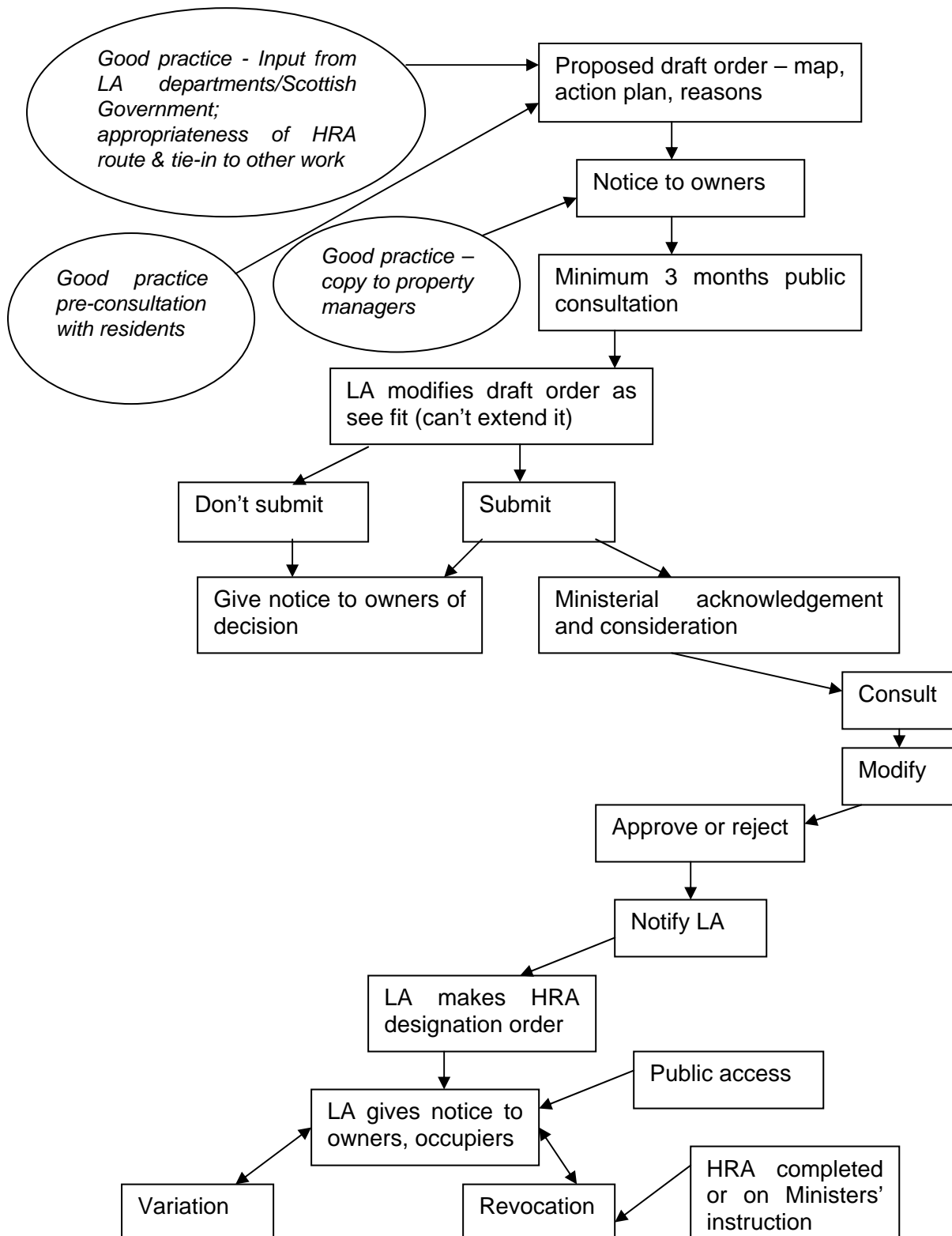
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HRA designation order

3.46. Once the local authority has identified an area as a possible HRA, it has to go through various stages of public consultation and consideration.

3.47. The following flowchart summarises this:



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- 3.48. Local authorities will want to ensure there are resources and structures in place to manage the drafting, issuing notices, collating and considering responses to feed into modification of order.

Designation order

- 3.49. There is no standard form for an HRA designation order. But local authorities should consider the legislative requirements which s2 sets out for what the designation order should contain. Annex A provides a summary of these, and other points to consider around the designation order.
- 3.50. Local authorities can implement an HRA designation order only after Scottish Ministers have approved a draft order. And before they submit a draft to ministers, they must first provide a draft for public consultation (see paragraphs 3.88-3.94 for more information).
- 3.51. Local authorities will want to be speaking to owners and residents from an early stage in preparing the draft order for this consultation phase, given the potentially subjective nature of some of the elements. This may also reduce the number of future challenges to the order.
- s2(1) 3.52. The designation order consists of a map highlighting the proposed HRA, and an action plan.

Map delineating the area

- 3.53. The 2006 Act refers to a “locality”. In most cases it is likely that the local authority will be able to draw a continuous line around the area it is designating as an HRA. But it should confirm with its legal advisors that any area it designates fulfils the necessary criteria for an HRA.
- 3.54. See paragraphs 3.34-3.39 for discussion on the size of an HRA.
- 3.55. The map should be marked so that each house can be clearly identified and linked to the action plan. This would include each house the local authority has identified for work or demolition, and any non-residential premises within the same block as sub-standard housing. It could also include any non-residential premises or housing even if the action plan doesn't set out work for them, if the authority decides to take that approach (see Annex B).

HRA action plan

- s3 3.56. The HRA action plan will identify each house in the area which requires action, either on the house or in relation to the house, and what that action is. This will form the basis for the notices local authorities will issue to each of those houses (see also paragraphs 3.117-3.121, and Chapter 4).

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- 3.57. There is no standard form which local authorities must use for an HRA action plan. They should take account of the requirements for the plan which s3 of the Act sets out.
- 3.58. Paragraphs 3.60-3.85 below look in more detail at these requirements. Annex B provides a summary of these, and other points to consider around the action plan.
- 3.59. The information in the action plan will depend on the reasons for designating the HRA. The work set out may be to deal with sub-standard housing, housing affecting the amenity of the area, or any adjacent or associated properties.

Contents

s3 (2)
(a),
(b)

- 3.60. If a local authority designates an HRA to deal with sub-standard housing, the action plan will:
- identify which housing ought to be closed or demolished; and
 - identify sub-standard housing and set out what work is needed to bring the housing up to, and keep it in, a reasonable state of repair.
- 3.61. The Act says that a house is not in a reasonable state of repair if it fails the tolerable standard. We have produced guidance on the tolerable standard (Volume 4), which a house may not meet for a variety of reasons. This could be the result of poor maintenance or a lack of repair, or for other reasons such as the absence of satisfactory thermal insulation. Local authorities can use the HRA powers (and subsequent work notices – see Chapter 4) to require work to bring a house up to the tolerable standard, whether or not those works involve repair.
- 3.62. If the local authority designates an HRA to deal with housing which is affecting the amenity of the area, the action plan will identify housing which requires work to enhance the amenity of the area, and set out that work.
- 3.63. Once a local authority has designated a potential HRA, it can specify work to any houses in that area. For example, it might designate an HRA where there are houses affecting the amenity, and several (but not a significant number of) sub-standard houses. The action plan would set out work to address the amenity issues, but it could also include work to bring those few sub-standard houses up to a reasonable standard.
- 3.64. Paragraphs 3.67-3.84 provide more information on what the action plan should specify in terms of demolition or work. Local authority officers who are involved in designating the HRA will need to be aware of any listed buildings or Tree Preservation Orders in the area in case this affects what work can be undertaken. Any demolition or work to a listed building must be consistent with the Planning (Listed Buildings and Conservation Areas)

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(Scotland) Act 1997 (available at www.opsi.gov.uk). See also Chapter 4 paragraphs 4.74-4.77 on enforcement of work and demolition notices.

s3(2)
(d)

3.65. The action plan should also describe the general effects of Part 15 of the 1987 Act, in terms of compensation payments in relation to BTS houses in certain circumstances.

s8

3.66. Local authorities have to take reasonably practicable steps to secure the implementation of the HRA action plan (see paragraphs 3.114-3.136 for further information on the implementation). The action plan must specify the period within which the local authority intends to achieve this.

Demolition

s3(2)
(a) (i)-
(iii)

3.67. An HRA action plan can identify a house for demolition because:

- it fails to meet the tolerable standard or is an obstructive building under Part 6 of the 1987 Act;
- it is a dangerous building under section 29 of the Building (Scotland) Act 2003; or
- it is in a state of serious disrepair and ought to be demolished. This is a new power under the 2006 Act.

3.68. It would be good practice for the HRA action plan to set out the reasons for identifying the house for demolition, including reference to which legislation the local authority is using. Local authorities can only demolish housing in an HRA for one of these reasons. If an authority wants to demolish a property for redevelopment and none of these reasons apply, it is likely that they will need to consider compulsory purchase using separate powers.

3.69. The new power under the 2006 Act lets a local authority designate a house for demolition because it is in a state of serious disrepair. An authority will want to ensure that it has evidence to support its decision that the house ought to be demolished rather than have works done to repair it.

3.70. For example, the local authority might decide to consider the costs of the work. It may be more cost effective to demolish the property, if the cost of the necessary work would be significantly more than the value of the house after the work had been done (see also demolition notices in Chapter 4).

s3(2)
(c)(i)

3.71. The action plan should also set out any standard for the demolition. This can include any standard for clearing the site of the demolished house.

3.72. It will be up to the local authority to determine what this standard should be.

Work

3.73. An HRA action plan can set out any maintenance, repair and improvement works to housing identified in the area as being sub-standard or adversely

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affecting the amenity of the area. It can also specify work to any house adjacent to, or otherwise associated with, a house which the plan identifies.

- 3.74. The action plan should set out what work is needed. It will be good practice for the local authority to make reference to the reason for designating the HRA (as paragraph 3.7) when deciding what work to specify. For example, if a house is adversely affecting the amenity of the area then the work should be in relation to its appearance or state of repair, as these are the triggers in relation to amenity that are given in the Act.
- 3.75. The action plan should also set out any standard which the house must meet on completion of the work. It will be up to local authorities to determine what these standards are. For example the authority might want to use standards they apply to their own properties, such as in relation to maintenance of grounds.
- 3.76. Local authorities should also take account of our guidance on the tolerable standard (Volume 4) when setting out any standards, since houses must at least meet the tolerable standard on completion of the work (see Chapter 2 paragraphs 2.17-2.20).
- 3.77. See Volume 1 Chapter 3 for more information on the link to SHQS.
- 3.78. The local authority can also specify how to complete the work by setting out in the action plan any steps to be taken to carry out the work. For example, if the plan requires work to prevent penetration of water through a flat roof, it might also specify the removal and replacing of the roof material to British Standard or Building Regulations.
- 3.79. The action plan can also include works for improving the safety and security of any houses or person, reducing the long-term maintenance costs of any houses, or enhancing amenity.

Sub-standard housing as reason for HRA

- 3.80. The action plan can include work to non-residential premises in a building which contains sub-standard housing or housing whose appearance or state of repair is affecting the amenity of the locality. But it can only specify work to the non-residential premises which is needed in order to address the problem with the housing.
- 3.81. The Act does not fully define “reasonable state of repair”. However, a local authority cannot consider a house which is BTS to be in a reasonable state of repair. Therefore, the work which the action plan specifies must at least bring the house up to the tolerable standard. It will be up to local authorities to determine what other factors to consider when assessing whether a house is in a reasonable state of repair. See also Chapter 4 on work notices.

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Appearance or state of repair adversely affecting amenity of area

- 3.82. The action plan will identify the housing and what work is needed to it to enhance the amenity of the area.
- 3.83. The local authority will have identified the housing as affecting the amenity of the area because of its appearance or state of repair (see Chapter 2 for more information). The plan should therefore set out work to address these issues.
- 3.84. The purpose of the powers is to deal with housing which is affecting the amenity of an area. It is not to enable local authorities to enhance the amenity of an area as a whole, for example by asking owners to contribute to the development of a play park on a currently unoccupied piece of waste land. Local authorities may wish to consider other regeneration schemes if this is the outcome they are looking for.
- 3.85. Local authorities may wish to take account of stakeholders' views when identifying houses under this category. They will also want to ensure that they have sufficient, appropriate evidence to support their decision.

Variation of designation order

- s4 (4) 3.86. Once an HRA designation order is in force, local authorities can vary it at any time if the change is unlikely to significantly adversely affect anyone.
- s4 (1), (3) 3.87. They can also vary it on the request of the owner of any house which the action plan identifies. But in this situation they can only vary the action plan part of the order, and only in relation to that house. For more information see paragraphs 3.106-3.109.

Consideration of drafts of order

Public consultation and notification to owners

- Sch 1 3.88. The first stage of considering the draft order is a period of public consultation, of a minimum 3 months. Local authorities must notify owners and occupiers of the draft order and ensure it is available for them to access. Authorities will probably find it beneficial to liaise with owners/residents etc even before this formal consultation phase. Communities Scotland has developed the National Standards for Community Engagement¹⁰, which should assist local authorities.
- 3.89. Annex E contains further information on how to notify owners. Information must be accessible both in terms of language and where that information is available. Local authorities should also provide information in at least two

¹⁰ www.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/cs_010771.hcsp#TopOfPage

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newspapers available in the area. In addition they can notify owners in any other manner which seems appropriate, for example by advertising it in local libraries, community centres, supermarkets or on their websites.

3.90. Annex E sets out the minimum requirements for who should receive notice. Where houses in an HRA are flats or tenements, it would be good practice for the notice to suggest that owners also forward a copy of it to the property manager (factor), where there is one, since they are likely to have a role to play in the implementation of works. Or local authorities might decide to send notice to property managers directly, where they are aware of them, in addition to the statutory requirements for serving notice.

Sch 1,
1 (2)
(a) 3.91. The notice must set out where the public can view a copy of the draft order. There should not be a charge for this.

Sch 1,
1 (2)
(b) 3.92. It must also set out how the local authority will apply its Scheme of Assistance arrangements to the implementation of the HRA. Local authorities should consider HRAs when setting out their public statement about the availability and amount of assistance (see also Chapter 2).

Sch 1,
1 (2)
(c) 3.93. The notice must also specify the length of the consultation (minimum of 3 months).

Sch 1,
1 (1)
(b); 4 3.94. If the action plan identifies work to a listed building, the local authority must also notify the planning authority of the HRA it is proposing, where the local authority is not the planning authority.

Modification of draft designation order

Sch 1,
1 (3),
(4),
(5) 3.95. The next step after the public consultation will be for local authorities to consider any responses they have received. They can modify the order in any way they see fit, other than extending the area of the proposed HRA, before deciding whether or not to submit the draft order to Ministers.

Sch 1,
1 (3)
(b),
(6) 3.96. Local authorities should notify owners and occupiers of this decision. Annex E provides more information on how to notify them. The notification should also describe the general effect of any modifications to the draft order which are significant.

Scottish Ministers

Sch 1,
2 (1) 3.97. The local authority should submit its draft designation order to Scottish Ministers, who will acknowledge receipt of the order before considering it.

Sch 1,
2 (2) 3.98. Scottish Ministers will either approve or reject the order. They can choose to consult with anyone they think appropriate before deciding this.

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- Sch 1,
2 (3),
(4),
- 3.99. They can modify the draft order, with the following constraints:
- they cannot extend the proposed area for the HRA;
 - they cannot change it to mark a house for demolition which the local authority had not so marked in its draft order; and
 - they will need to consult with the planning authority before modifying the plan in relation to any listed building.

- Sch 1,
2 (2)
- 3.100. Scottish Ministers must give notice to the local authority once they have made their decision.

Designation of HRA

- 3.101. An HRA designation order is made by the local authority if Scottish Ministers decide to approve it, with or without modification, and if the local authority still wishes to proceed.

- 3.102. The local authority can choose not to proceed with an HRA at this stage. For example, the local authority may not wish to proceed with an HRA which Scottish Ministers have modified, or it may no longer have sufficient resources to commit to an HRA.

- Sch 1,
(3)
(1),
(2)
- 3.103. If the local authority does decide to progress with the HRA, an authorised signatory should sign the designation order on behalf of the authority, at which point the order is made. Local authorities must give notice of this to the owners and occupiers of each house in the HRA (see Annex E for more information). The notice should also describe the general effect of the HRA designation order.

- Sch 1
(3)(2)
(b)
Part 2
- 3.104. The notice should include a statement of how the local authority will support owners of the houses which the plan identifies under the Scheme of Assistance. Part 2 of the Act states that local authorities must provide assistance to owners where the local authority has served a work notice on their property. The Act also requires the local authority to publish a statement of its criteria for when and how it uses its assistance powers, and the statement in the notice of designation should refer to this.

- Sch 1,
(3) (2)
- 3.105. The notice should also specify where the public can access a copy of the designation order so long as it remains in force. The local authority can determine how and where this is done, provided that it is satisfied that it is reasonably obtainable.

Variation of HRA designation order

- s4
- 3.106. Local authorities can vary the designation order under two circumstances:
- if the owner of a house asks them to. But they can only vary the action plan, and any such variation may only affect the house belonging to that owner. Before making any variation, the local authority must

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consult with the owner and any other person who the variation might affect.

- if the local authority thinks that the variation will not significantly adversely affect anyone. Local authorities can make this sort of variation at any time.

s4 (5)

3.107. If a local authority decides to vary the HRA designation order, it must notify any persons affected or anyone else appropriate. The notice should describe the general effect of the variation, and state where and when copies of the revised designation order will be available. The local authority should ensure that this is reasonably obtainable.

3.108. Annex E provides more information on serving notices.

s4 (3)

3.109. Local authorities may not vary any other part of the HRA designation order in response to a request from an owner.

Revocation of HRA designation order

s5 (1)

3.110. The local authority must revoke the HRA designation order when the action plan has been fully implemented. It must also revoke it if the Scottish Ministers instruct it to do so.

s5 (2)

3.111. The local authority can also revoke a designation order at any time if it thinks it is no longer appropriate due to a change in circumstances. Scottish Ministers must agree to such a revocation.

s5 (4)

3.112. In any case local authorities must notify anyone who the revocation affects.

s5 (3)

3.113. If a local authority revokes an HRA designation order, any work notice which it has served to implement the action plan will also cease to have effect. See also Chapter 4 on work notices.

Implementation of an HRA

3.114. The action plan identifies the houses in the HRA which require work or demolition, and gives details of what that will involve. It may be that owners carry out this work at some point during the consideration of the HRA designation order.

3.115. Where this is not the case, local authorities can serve notices on owners of houses and non-residential premises which the HRA action plan identifies, to implement that plan. They can serve notices once the HRA designation order has been made.

Part 2

3.116. Local authorities must provide assistance under their Scheme of Assistance where they serve work notices on owners. But there is no mandatory requirement to provide grants to anyone they serve a notice on.

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Work notices

s30

3.117. Local authorities can serve a work notice to require the owner of a house to carry out the work to the house which the action plan sets out. A work notice in this situation may require a greater range of work than a notice relating to a house outside an HRA could specify. Chapter 4 provides further information on work notices.

Demolition notices

3.118. Paragraph 3.67 sets out the circumstances where local authorities can designate a house in an HRA for demolition.

s33

3.119. Where the local authority identifies a house in an HRA for demolition because it is in a state of serious disrepair, the local authority can serve a demolition notice under the 2006 Act. Chapter 4 provides further information on demolition notices.

3.120. If the local authority identifies a house for demolition under Part 7 of the 1987 Act, it should serve a closing or demolition order and may serve suspension and revocation orders where the owner carries out improvements. The provisions in section 114 to 117 of the 1987 Act that govern these processes remain in force.

3.121. If a local authority applies section 29 of the Building (Scotland) Act 2003, it should serve a dangerous building notice under that Act.

Carrying out works or demolition

3.122. Owners may arrange to carry out the work set out in the HRA action plan and notices themselves. Local authorities should consider what support they will provide to owners. They must offer support through the Scheme of Assistance where they have served work notices, although they cannot use the Scheme to help with demolition notices. The HRA designation order will have described what assistance the local authority will provide (see paragraph 3.104).

s55

3.123. Local authorities can also do the work, or arrange for it to be done, on behalf of the owner, if the owner agrees. The owner would be liable for the costs of this work (see Annex G on Recovery Of Expenses).

s60

3.124. Owners can ask the local authority to issue a certificate to confirm that the work has been done to the house. If the local authority has done the work on the owners' behalf, they must repay the local authority before it can grant a certificate. See also Chapter 4 on work and demolition notices.

s35

3.125. The action plan and notices will give a date for completion of the works. Where the owner fails to carry out the work by the specified date, local

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authorities have powers to do the work themselves and recover the costs from the owner. See Chapter 4 for more information on enforcement of work and demolition notices.

Duty to re-house displaced residents

s9

3.126. Where an action plan identifies a house for work or demolition, this might permanently displace a person from their living accommodation. If this was that person's only or main residence on the day on which the local authority gave notice of the HRA designation order, the local authority must ensure that the person is provided with suitable alternative living accommodation, if the person asks them to.

3.127. The local authority does not necessarily have to provide the alternative accommodation from its own housing stock.

s9 (2)
(a)

3.128. Local authorities should ensure that the accommodation provided is on reasonable terms and is suitable. They should consider whether it is suitable for the person being displaced and any other person who would have been living there as their main residence when the designation order was made had they not been working or studying elsewhere.

3.129. Authorities should ensure that occupiers are aware of their right to suitable alternative accommodation.

s9 (2)
(b)

3.130. As far as practicable the accommodation should also be close to where the previous accommodation was.

3.131. Authorities should include any equalities considerations when identifying the suitability of alternative accommodation.

3.132. Chapter 4 paragraphs 4.63-4.69 provide information on temporary displacement of residents due to the implementation of work or demolition notices.

Other obligations

s8 (1),
(2)

3.133. Local authorities are responsible for taking practical steps to ensure the implementation of an HRA. For each house which the action plan identifies, the local authority must inform the owner and occupier about the way in which it intends to secure the implementation of the plan.

s8 (2)

3.134. Local authorities must also give owners and occupiers progress reports about the implementation of the plan from time to time.

3.135. It will be important that the local authority keeps owners and occupiers up to date with the progress of the works. Local authorities might want to

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consider circulating a timetable covering some of the key phases, for example:

- when they will be sending out notices specifying work or demolition;
- what the proposed period will be for completing that work;
- the next stages for enforcement of notices if owners miss the deadlines for completion; and
- dates and places for circulating further updates.

3.136. Local authorities should also consider how they will monitor and react to the progress of the implementation of the action plan against the objectives and timescales.

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Chapter 4 Work Notices And Demolition Notices

- 4.1. This chapter provides more information on work notices and demolition notices. It looks at what the notices should contain and how to enforce them. This is primarily the legislation set out in Part 1 Chapter 5 of the 2006 Act.
- 4.2. There is no standard form for work or demolition notices. Annexes C and D summarise the legislative requirements for these notices, and also highlight further information and issues which local authorities may wish to consider when designing these documents.
- 4.3. These powers replace the existing powers to make repairs notices and improvement orders. They sit alongside the new powers to make maintenance orders (see Volume 3 Maintenance for more information) and existing powers to make demolition and closing orders.
- 4.4. Local authorities can serve work and demolition notices on owners of properties in an HRA to carry out the work or demolition which the action plan identifies. They can also serve work notices on owners of individual houses which are sub-standard.
- 4.5. Owners can arrange to carry out the work or demolition themselves. Or the local authority can do it for them, with the agreement of the owners and at their expense. But there is no obligation on the local authority to carry out the work or demolition on their behalf.
- 4.6. If the owner does not comply with the notice within the time set out for it, the local authority can carry out the work itself and reclaim the cost of this from the owner.
- 4.7. This chapter sets out more information on:
- work notices;
 - demolition notices; and
 - implementation and enforcement of work and demolition notices.

s30,
33

s35,
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WORK NOTICES

Background

- 4.8. Under the Housing (Scotland) Act 1987 local authorities could issue repairs notices and improvement orders. The 2006 Act replaces these with a single work notice.
- 4.9. Repairs notices and improvement orders which local authorities issued prior to the repeal of those powers will continue to apply until they have been completed or the local authority revokes them. Local authorities should continue to provide mandatory grant assistance where they have served a

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repairs notice or improvement order. See paragraph 1.9 for more information.

4.10. The table below summarises the main differences.

| | Repairs Notice (1987 s108) | Improvement Order (1987 s88) | Work notice (2006 Ch 5) |
|---|---|---|---|
| Situation | State of serious disrepair. | BTS outwith HAA. | <ul style="list-style-type: none"> • House which an HRA action plan identifies: <ul style="list-style-type: none"> ▪ sub-standard housing; ▪ appearance or repair adversely affecting amenity of area; or ▪ adjacent or associated houses. • sub-standard house, whether or not in HRA. |
| Period for completion | Minimum 21 days. | Within 180 days. | A reasonable period. Minimum 21 days. |
| Purpose | Bring up to a reasonable standard with regard to age, character and location. | Bring up to TS and put in good state of repair. | <p>To implement an HRA action plan:</p> <ul style="list-style-type: none"> • Bring up to and keep in a reasonable state of repair including meeting the TS; • Enhance amenity if in HRA. <p>To deal with individual housing outwith HRA:</p> <ul style="list-style-type: none"> • Bring up to and keep in a reasonable state of repair including meeting the TS, with no regard to age, character, location or internal decorative repair. |
| Appeals | Yes | | Yes – see also Annex F |
| Service of documents | | | Notices to be served - see also Annex E |
| Registration | | | No |
| Assistance | Mandatory grant | Mandatory grant | Mandatory Scheme of Assistance |
| Certificate on completion of works | | | Owners can request this from LA – can only issue if have been paid any monies owed to them. |
| Revocation | | | Yes, in specific circumstances; and if HRA action plan is revoked. |

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Purpose

s30

4.11. Local authorities can serve a work notice on the owner of a house to require him or her to carry out work to it. The notice will set out what work the owner needs to do to:

- implement an HRA action plan; or
- deal with sub-standard housing, whether or not it is in an HRA.

s69

4.12. Authorities can also serve them on owners of non-residential properties in the same building as sub-standard housing (whether or not it is in an HRA), or in the same building as housing which an HRA action plan identifies as needing work (see paragraphs 4.24-4.25. and Chapter 2 paragraph 2.15 and Chapter 3 paragraph 3.40). But they can only do this if the work is needed to deal with the housing.

Work notices to implement an HRA action plan

s30

4.13. Local authorities can serve a work notice on the owner of each house which the HRA action plan identifies as needing repairs, improvement or maintenance. More information on how to deal with houses which the HRA action plan identifies for demolition is available in paragraphs 4.39-4.48.

4.14. Local authorities should not issue work notices until Scottish Ministers have approved the draft HRA designation order and it has been made (see also Chapter 3 for more information).

4.15. Authorities do not have to issue notices to every house which an HRA action plan identifies. For example, the owner of a property may decide to carry out the works based on the HRA action plan before the local authority has served a notice. Or the owner may decide to demolish the house rather than carry out the work. But where this does not happen, the local authority can serve a notice to require the owner to implement the action plan.

s3

4.16. An HRA action plan will identify a house as needing work because:

- it is sub-standard (see Chapter 2) and needs repair or improvements, and the work is needed to bring the house into, and keep it in, a reasonable state of repair including meeting the TS; or
- it is adversely affecting the amenity of the area, and the work is needed to address the appearance or state of repair of the house to enhance the amenity of the area; or
- it is a house which is adjacent to, or associated with, one of these types of houses, and requires work.

s3
(3)

4.17. The work notice will expand on the information which the HRA action plan sets out. This can include work to improve the safety and security of any persons or houses, to reduce the long term costs of maintaining any houses or to enhance the amenity of any houses. It would be good practice for the work or demolition notice to include information on where the owners can

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view a copy of the HRA action plan. Chapter 3 provides more information on HRAs.

s5

- 4.18. If a local authority issues a work notice to implement an HRA action plan, the notice will cease to have effect if the local authority revokes the HRA designation order which includes that plan (see Chapter 3 for more information).

Work notices to deal with sub-standard housing

s30
(1) (b)

- 4.19. A local authority can serve a work notice on the owner of any house which it considers to be sub-standard. The house does not need to be in an HRA.
- 4.20. If the house **is** in an HRA, the work notice should set out the work which the HRA action plan has identified for that house.
- 4.21. If the house is outwith an HRA, the work notice should set out the work which the local authority thinks is necessary to bring the house up to, or keep it in, a reasonable state of repair including meeting the Tolerable Standard (see Chapter 3 on “reasonable state of repair”). This would not include the additional elements at paragraph 4.17 above, in terms of safety and security and so on. Local authorities can only include these elements when they are serving work notices to implement an HRA action plan.
- 4.22. If the house is not within an HRA, the local authority should consider whether a work notice is the most appropriate power to deal with the issues it has identified. For example, a local authority may decide that it is more appropriate to serve a dangerous building notice to deal with a house in serious disrepair.
- 4.23. Local authorities cannot use work notices to deal with houses which are affecting the amenity of an area if they are not in an HRA. Local authorities can only issue work notices for this purpose on houses which are identified in an HRA action plan. If the appearance or state of repair of a house outwith an HRA is adversely affecting the amenity of the area, the local authority should consider what other powers are available to deal with this. For example, it may be appropriate to serve a nuisance abatement order.

Other issues

s69

- 4.24. Local authorities can serve a work or demolition notice on the owner of non-residential premises, but only where those premises are:
- in the same building as housing which is sub-standard (whether or not in an HRA); or
 - adversely affecting the amenity of the area (HRAs only).

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- 4.25. In both cases, the notice can only require work or demolition to non-residential premises if this is needed to deal with the issues in the housing, for example where there are communal repairs.
- 4.26. If local authorities want to deal with other issues in non-residential premises, they will need to use powers under other legislation.
- 4.27. There may be situations where local authorities use powers under the 2006 Act and those under other Acts on houses in the same area. For example, they may issue a work notice on a sub-standard house which is close to a house more appropriately dealt with using a nuisance abatement order. Local authorities will want to consider how best to co-ordinate the various notices they serve.

Administration

Form of notices

- 4.28. Local authorities do not have to use a national standard form when issuing work notices. So they will need to consider the requirements of the Act when designing their work notice. Annex C summarises these requirements, and identifies other issues which local authorities may want to consider when designing the notice.

Service of work notice

s62

- 4.29. Local authorities must serve the notice on the owner of the house, and on other interested parties (Annex E provides further guidance on the service of documents). They should issue a separate work notice for each house. For example, if a person owns more than one flat in a close which an action plan identifies as needing work, the local authority should issue that owner with separate work notices for each property.
- 4.30. Where there are property managers or factors, local authorities may find it useful to encourage them to have a role in the implementation of the works notice. It would therefore be good practice for local authorities to suggest to owners that they forward a copy of any notice the local authority serves on them to their factor, although there is no requirement under the Act to involve them.
- 4.31. Alternatively, the local authority might decide to send a copy of any notice to the property manager itself, where known. It could ask owners to provide information on the factors, or by contacting the Property Managers Association Scotland (PMAS).
- 4.32. Owners can appeal against the local authority's decision to serve a work notice. See Annex F for further information on the rights to appeal.

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Suspension of work notice

4.33. There might be a situation where the local authority thinks that carrying out a work notice will be detrimental to the health of the house's residents.

4.34. Local authorities should consider this on a case by case basis. An example may be where the occupiers of a house are elderly or ill, and the local authority thinks that the disruption which the works will cause will have a worse effect on them than the disrepair itself.

s31 4.35. In this case the local authority can suspend a work notice, letting the owners know about this as set out in Annex E Service Of Documents).

s31
(3),
(4) 4.36. The local authority can lift the suspension at any time, providing it again gives notice to the appropriate people. The local authority can use the notice to extend the period for completing the works by a reasonable amount. It can also specify particular steps to be taken in carrying out the work. These may replace or complement any other steps set out in the work notice or in a previous notice which lifted the suspension of a work notice.

Revocation of work notice

s5
(3) 4.37. A work notice which a local authority issues to implement an HRA action plan will cease to have effect if the authority revokes the HRA designation order.

s32 4.38. A local authority can also revoke a work notice if it considers that it is no longer required. The local authority should inform the owner if it has revoked a notice (See Annex E Service Of Documents for further information).

WORK NOTICES - SUMMARY

The main features of work notices are that:

- they replace repairs notices and improvement orders;
- transitional arrangements apply;
- local authorities must provide support through Scheme of Assistance to owners they serves work notices on;
- local authorities can use them to implement HRA action plans or to require work on sub-standard houses, whether or not in an HRA;
- they can be suspended, revoked or period extended;
- in all cases the local authority must serve notice on the owner (and other interested parties – see also Annex E); and
- owners can appeal (see also Annex F).

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DEMOLITION NOTICES

Background

s3,
s33

4.39. The 2006 Act introduces a new power to designate a house in an HRA for demolition because it is in a state of serious disrepair. Local authorities can issue demolition notices to the owners of these properties to implement the HRA action plan.

s3

4.40. A local authority can also use an HRA action plan to identify a house to be demolished because it is dangerous or below the tolerable standard. In these situations the local authority should issue a dangerous building notice under section 29 of the Building (Scotland) Act 2003, or a closing or demolition order under Part 6 of the 1987 Act. Local authorities can also use these powers for houses that are not in an HRA.

4.41. The table below looks at the key features of a demolition notice.

| | Demolition notice |
|------------------------------|---|
| Situation | Where an HRA action plan has identified a house as being in a state of serious disrepair and ought to be demolished |
| Period for completion | Minimum 21 days |
| Purpose | To implement an HRA action plan |
| Appeals | Yes – owner can appeal decision to serve and enforce a demolition notice. See Annex F for more information. |
| Service of documents | Yes – see Annex E for more information |
| Registration | Local authorities do not have to register them |
| Assistance | Not covered by Scheme of Assistance |

Purpose

s33
(1)

4.42. Local authorities can only serve demolition notices on owners of properties within HRAs. The HRA action plan must have identified the house for demolition because it is in a state of serious disrepair.

4.43. Local authorities cannot issue demolition notices on houses which the HRA action plan identified for demolition under Part 6 of the 1987 Act or section 29 of the Building (Scotland) Act 2003. In these cases, local authorities should continue to issue closing or demolition orders, or dangerous building notices, as appropriate.

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Administration

s33

4.44. There is no standard form for a demolition notice. But section 33 of the Act sets out certain requirements for what the local authority must include in its notice.

4.45. Annex D provides a summary of these.

s62

4.46. The Act requires local authorities to serve a demolition notice on various people who will have an interest in the property. For more information, see Annex E on service of documents.

4.47. It would also be good practice for the authority to send copies of the notice to property managers, where known.

4.48. Owners may appeal against the decision to serve a demolition notice. See Annex F for further information.

DEMOLITION NOTICES – SUMMARY

The main features of demolition notices are that:

- they represent a new power for local authorities to deal with houses which are in serious disrepair and ought to be demolished;
- they are not covered by Scheme of Assistance;
- local authorities can only use them to implement HRA action plan in relation to demolition of house in serious disrepair;
- local authorities will continue to have other powers for demolition, for example demolition orders;
- the period for completing the notice can be extended;
- in all cases the local authority must serve notice on owners (and other interested parties – see also Annex E); and
- owners can appeal – see also Annex F.

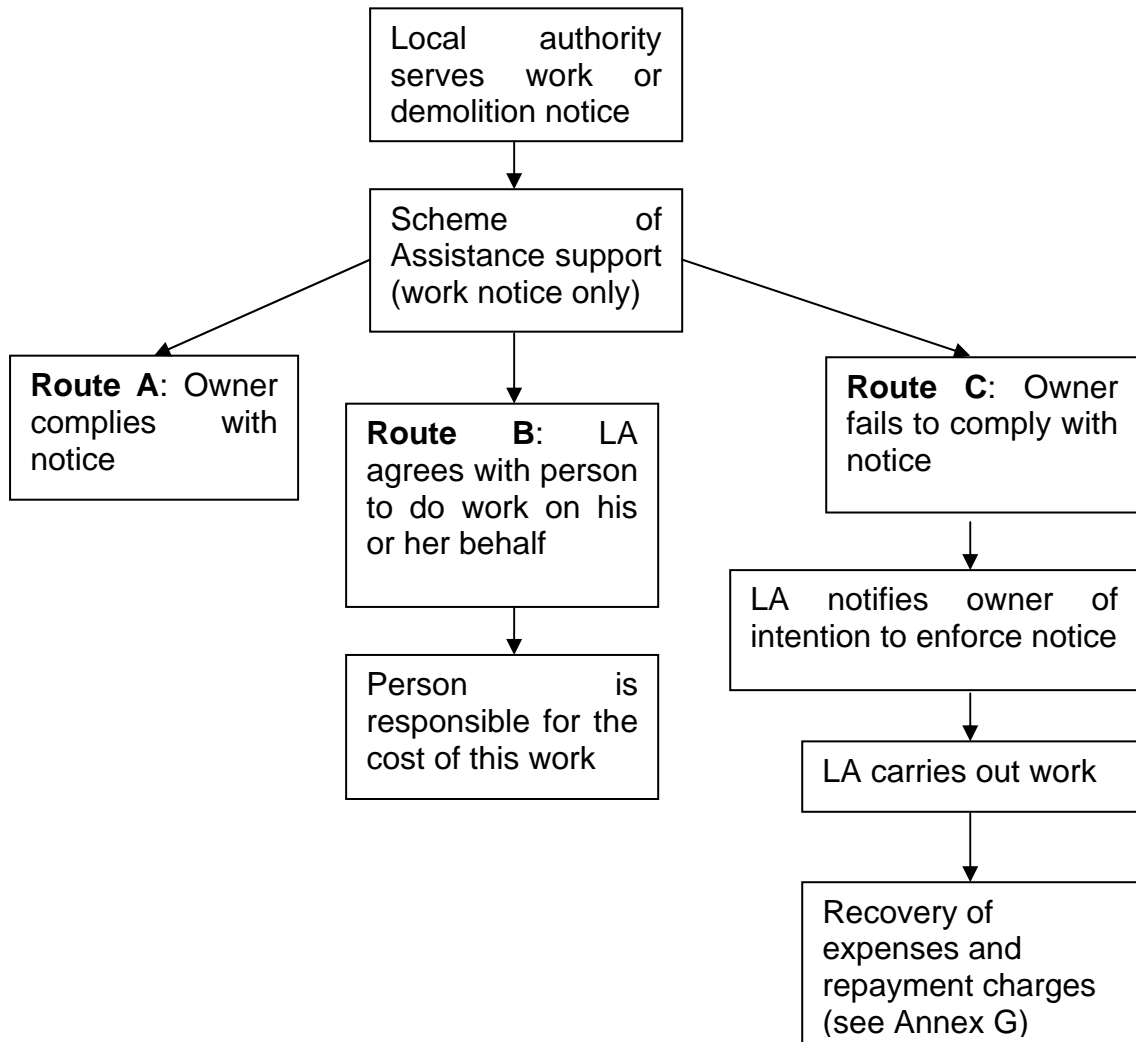
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Implementation Of Work And Demolition Notices

4.49. The flowchart below summarises three possible routes to implementing work or demolition notices. Paragraphs 4.51 to 4.78 look at these in more detail. Local authorities will want to consider how they target support through their Scheme of Assistance, as this is likely to have an impact on which route owners take.



4.50. Where a local authority has used another form of notice, for example a closing order or dangerous buildings notice, they should use the powers of enforcement available under the relevant primary legislation to ensure compliance.

Route A: Owner does the work or demolition themselves

4.51. When owners receive a work or demolition notice, they should arrange to carry out the work or demolition within the time set out in the notice. They may be able to do the work themselves, or they might hire a contractor.

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Local authorities should provide assistance in relation to work notices, taking account of our statutory guidance the Scheme of Assistance (Volume 5).

Route B: Local authority does the work or demolition on behalf of the owner, with his/her agreement

s55

- 4.52. The local authority can carry out work or demolition on behalf of the owner, so long as he or she agrees and pays for it. But the local authority does not have to do the work or demolition even if the owner asks them to.
- 4.53. The local authority might want to consider whether it will offer this service to owners. If so, it should make owners aware of this option.
- 4.54. In some cases, the scale of the work required may mean that it will be most practical for the local authority to take on the work, for example where extensive works are required to a tenement block to implement an HRA action plan. The local authority may wish to advise owners of this option, for example in a covering letter issued with the notice. Or this might be part of general information available through the local authority's Scheme of Assistance, or highlighted as part of information sessions held for owners from the early stages of consultation. The local authority could then set an interim deadline for owners to respond to the local authority to ask them to do the work. It is important that the local authority has clear written authorisation and agreement from the owner before proceeding, covering the works, access, the expenses that can be recovered and any other relevant matters. In all cases owners of a house have a right to arrange for the work in a notice to be carried out themselves.

s55

- 4.55. If the local authority carries out the work on behalf of a person, that person will be responsible for the costs of the work.

s60

- 4.56. Owners can ask for a certificate from the local authority to confirm that the work has been completed. If the local authority has carried out that work then they should not issue a certificate until the owner has repaid the charges (owners have a right of appeal where the local authority refuses to grant a certificate – see Annex F).

Route C: Local authority enforces a work or demolition notice

Owner fails to comply with notice

s35

- 4.57. Local authorities have the power to carry out work or demolition if the owner does not comply with a work or demolition notice. For example, the owner may not have started or completed the work by the deadline in the notice, or they have done the work but it is not to the required standard set out in the notice. Again, local authorities will want to ensure that support and information is available to owners through the Scheme of Assistance arrangements to reduce the situations where this will happen.

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4.58. Local authorities cannot enforce notices until the period set out in the notice within which the work is to be done has passed, unless they have received notice from the owner that:

s35
(2)

- they are unable to comply with the notice because of a lack of necessary rights, of access or otherwise. The owner must have taken reasonable steps for the purposes of acquiring those rights; or
- if the owner has given the local authority notice that they consider that carrying out the work or demolition is likely to endanger any person.

4.59. In these situations it is appropriate for the local authority to implement the notice as there are more powers available to the authority than to individual owners. The local authority can use compulsory purchase powers in certain situations (under the Housing (Scotland) Act 1987), and can insist on the evacuation of premises where there is a potential danger (see paragraphs 4.63-4.69).

Local authority notifies owner of intention to enforce notice

4.60. The local authority does not have to give notice before it enforces a work or demolition notice. But it does have to give notice if it will be including any additional works when enforcing which were not set out in the notice.

s62

4.61. In this case it must give 21 days notice, unless the local authority thinks that the situation is urgent, for example if a building subject to a demolition notice is about to fall down and cause damage.

s35
(3)

4.62. The owner of a property can appeal against the local authority's decision to enforce a work or demolition notice. It would be good practice for local authorities to ensure owners are aware of this. See Annex F for more information on the appeals procedure.

s64

Local authority carries out work or demolition

4.63. Local authorities will need to consider whether it is necessary to evacuate any premises before enforcing a work or demolition notice. They will need to do this if carrying out work or demolition is likely to endanger the occupant of any land or premises.

s37
(1)

4.64. The local authority must give notice to the occupant if this is the case. The notice should set out the reasons why the authority thinks it necessary for the person to move. It should also set out the date by which the person should evacuate the premises, which cannot be fewer than 14 days after the local authority has served the notice.

s37
(2)

4.65. The notice will cease to have effect on completion of the work or demolition, or if the sheriff refuses to grant a warrant for ejection.

s37
(3)

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- s56 4.66. The Act makes provision for the continuation of a person's tenancy or occupancy arrangements where he or she has to be evacuated in this situation.
- s38 4.67. If the occupant refuses to leave the premises by the deadline which the notice sets out, the local authority can apply to the sheriff for a warrant to eject them from the premises. But a person cannot be ejected if they do not have suitable alternative living accommodation.
- 4.68. The local authority should ensure that they involve relevant services who may be able to help in these situations. For example, homelessness services should be aware so that they can provide support and advice as necessary, to help the occupant to find suitable accommodation.
- s39 4.69. Once a local authority has required a person to evacuate premises in this way, it will be an offence for any person to begin to occupy, or to allow another person to begin to occupy, those premises. But it will not be an offence if the person is continuing to occupy those premises and was doing so before the local authority required evacuation.
- s35 (1) 4.70. The local authority may identify further work which is needed when it is enforcing a notice. The local authority can carry out this additional work, so long as it is needed to implement the HRA action plan or to bring sub-standard housing up to, and keep it in, a reasonable state of repair. But it can only do this if this additional work could not reasonably have been identified before the work or demolition notice was served.
- s40 4.71. Where the local authority is enforcing a demolition notice, it can acquire the house and its site. This may be through agreement with the owner, or through compulsory purchase if agreed by Scottish Ministers.
- s41 (1) 4.72. If a local authority has enforced a demolition notice by carrying out the demolition works itself it may sell any material arising from the demolition of that house. It does not matter whether or not the local authority compulsorily purchased the house and site.
- s41 (2),(3) 4.73. The local authority can use any proceeds from such a sale of materials to go towards any expenses which it is eligible to recover from the owner of the property for carrying out the demolition. See also paragraph 4.78 on recovery of expenses. If those proceeds exceed the total amount of expenses recoverable by the local authority, it must account to the owner of the house for the surplus.

Listed buildings

- 4.74. It may be that the work or demolition notice relates to a house which is a listed building. The house might be a listed building in its own right, or it might form part of a listed building.

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- 4.75. Where the house is in an HRA, the local authority will have consulted with the planning authority when designating the HRA.
- s58 4.76. Before carrying out any works or demolition (Route C), the local authority must consult with Scottish Ministers (Historic Scotland), and the planning authority (if that is not the local authority). It must also consult with any other persons it sees fit.
- 4.77. In all cases, neither the local authority nor owners (or any other persons acting on their behalf) should undertake any work until they have obtained the appropriate consents. It would be good practice for the local authority to advise owners of how to obtain these if they are unsure.

Recovery of expenses and repayment charges

- s59,
Part 7 4.78. If a local authority enforces a work or demolition notice, it can recover the costs from the owners. This may include issuing a repayment charge. Annex G contains more information on recovery of expenses and repayment charges.

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Annex A HRA Designation Order

A.1. Chapter 3 looks at what local authorities have to do to designate a Housing Renewal Area (HRA). This includes producing an HRA Designation Order. The following tables summarise the requirements for this.

A.2. Requirements for content (legislative requirements are shown in grey):

| Legislative reference | Required content | Further information |
|-----------------------|---|---|
| s2 (s1) | <ul style="list-style-type: none"> set out the reasons for designating the HRA, with reference to s1 | This should indicate that the local authority considers that <ul style="list-style-type: none"> a significant number of houses are sub-standard; or the appearance or state of repair of any houses is adversely affecting the amenity of the locality. |
| | <ul style="list-style-type: none"> must include an HRA action plan | <ul style="list-style-type: none"> see Annex B for more information |
| | <ul style="list-style-type: none"> must include a map delineating the HRA | <ul style="list-style-type: none"> the local authority should consider the HRA to be a “locality” |

A.3. The different versions of the HRA designation order are:

| Legislative reference | Version | Further information |
|---------------------------|--|--|
| Sch 1 1(2) | Draft for public consultation | <ul style="list-style-type: none"> The local authority will need to provide a draft HRA designation order for public consultation. It should give notice of when and where the public can access it. It would be good practice to include discussions with relevant stakeholders when drafting the designation order. |
| Sch 1 1(3), (4), (5), (6) | Draft for submission to Scottish Ministers | <ul style="list-style-type: none"> The local authority can modify the draft designation order, if necessary, after public consultation. It cannot extend the proposed area of the HRA. It should decide whether or not to submit the draft order to Scottish Ministers. It should give notice of its decision, |

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| | | |
|---------------------|---|---|
| Sch 1 (2) | | <p>including the general effect of any modifications. See also Annex E on service of documents.</p> <ul style="list-style-type: none"> Ministers can approve it (with or without certain modifications) or reject it. |
| Sch 1 (3) s7 | Making of HRA designation order | <ul style="list-style-type: none"> The authority can make the designation order once ministers have approved it. It must give notice of this as soon as practicable after making it. See Annex E on service of documents. The notice must describe the general effect of any changes, refer to the authority's Scheme of Assistance statement, and specify where the public can access a copy of the order. The authority must make a copy of this available to the public, free of charge. This should include any variations. |
| s4 | Variations to the HRA designation order | <p>The authority can vary the designation order:</p> <ul style="list-style-type: none"> at any time, and in any way it considers unlikely to adversely affect anyone; or at the request of an owner of a house which the action plan identifies, but <ul style="list-style-type: none"> only in relation to that house; only by varying the action plan; and only having consulted owner and anyone else affected by the proposed variation. It must give notice of this. See Annex E service of documents. The authority must make a copy of any variations available to the public, free of charge, along with the HRA designation order. |

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Annex B HRA Action Plan

B.1. Chapter 3 looks at what local authorities have to do to designate a Housing Renewal Area (HRA). This includes producing an HRA Action Plan. The following tables summarise the requirements for this.

B.2. Requirements for content (legislative requirements are shown in grey):

| Legislative reference | Required content |
|-----------------------|--|
| s3 (2) - mandatory | <p>The action plan must:</p> <ul style="list-style-type: none"> • Identify sub-standard houses, and what action is needed (as s1(a)) – house to be: <ul style="list-style-type: none"> ○ closed or demolished under 1987 Act; ○ demolished under 2003 Act as a dangerous building; ○ demolished due to serious disrepair; or ○ worked on to bring it in to, and keep it in, a reasonable state of repair; • Identify houses which are affecting the amenity of the HRA (as s1(b)); • Specify: <ul style="list-style-type: none"> ○ for demolition, the standard to carry this out to, including any standard to which the site is to be cleared; ○ for work* (see also below): <ul style="list-style-type: none"> ▪ the work to be carried out; ▪ any standard for that work; and ▪ any steps to take in carrying out the work; • Describe the general effect of Part 15 (compensation payments) of the 1987 Act, and Part 2 Scheme of Assistance as they apply to houses which the plan identifies; and • Specify the period within which the local authority intends to secure the implementation of the plan. |
| s3 (4) - optional | <p>The work* can include work to:</p> <ul style="list-style-type: none"> • Improve the safety or security of any houses or person; • Reduce the long-term costs of maintaining any houses; or • Enhance the amenity of any houses. |
| s 3(4) - optional | <p>The plan can also specify work to any house adjacent to, or in any way associated with, a house which the plan identifies under s3(2) above.</p> |
| s194 (1) | <p>*The act defines “work” as including maintenance, repair and improvement but not including demolition.</p> |

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B.3. The local authority might also want to think about:

| | |
|--|---|
| Other houses | <ul style="list-style-type: none"> • The plan does not need to identify houses which do not need work done to them. • But the local authority could decide to identify all houses in the HRA for completeness, for example specifying where there is “no action required”. |
| Non-residential premises | <ul style="list-style-type: none"> • Local authorities will need to consider whether there are non-residential premises within the HRA which they can include. • They will need to take account of the restrictions around doing this, in terms of ensuring the work is needed to deal with housing within the same premises. |
| Tie in to work and demolition notices | <ul style="list-style-type: none"> • The authority will be using work and demolition notices to implement the HRA action plan. • It will want to consider how it will adapt the information in the action plan into subsequent notices. |
| What other information to provide when issuing action plan? | <ul style="list-style-type: none"> • The local authority might want to provide owners with information on the HRA process when it consults on, and/or designates, the HRA. |

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Annex C Work Notice

C.1. Chapter 4 looks at what the Act says in relation to Work Notices. The following tables summarise the requirements for these notices.

C.2. The work notice must include the following (legislative requirements are shown in grey):

| Legislative reference | Requirements | Further information |
|-----------------------|----------------------------|---|
| s30 (3) (a) | The reason for the work | <ul style="list-style-type: none"> • There are different approaches possible. For example, the notice could say a property requires work because it is BTS. Or it could specify why it is BTS, for example because it is structurally unstable. • If the house is in an HRA, this is likely to be a reiteration of the information in the HRA action plan. |
| s30 (3) (b) | The work to be carried out | <ul style="list-style-type: none"> • s194 (1) defines “work”. • So the notice can include repairs, improvement or maintenance work. But it cannot include demolition. |
| s35 (1) | | <p><u>For houses which an HRA action plan has identified:</u></p> <ul style="list-style-type: none"> • The work notice is likely to expand on the work which the action plan sets out. Local authorities should not introduce any additional work in the notice which was not included in the action plan. • The only exception to this is where the local authority has to enforce a plan, and identifies additional work which is needed which it could not reasonably have known about before serving the notice. • If the action plan identifies a house as being sub-standard, the notice will set out work to bring the house up to, and keep it in, a reasonable state of repair. • If the action plan identifies a house as adversely affecting the amenity of the area, the notice will set out the work the owner |

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| Legislative reference | Requirements | Further information |
|------------------------|---|---|
| | | <p>bring houses up to SHQS. However local authorities may wish to consider how this work will tie in to other responsibilities (see also paragraph 3.76).</p> <ul style="list-style-type: none"> • Work on sub-standard housing is intended to bring the house up to a reasonable state of repair. • It will be up to local authorities to determine what other facts to take into account when considering whether a house is in a reasonable state of repair (cross reference to early chapter), but it must at least meet the tolerable standard. • If the house is in an HRA, this is likely to be a reiteration of the information in the HRA action plan. |
| s30 (3) (d) s30 (4) | The period within which the work must be completed (at least 21 days) | <ul style="list-style-type: none"> • This should be a period which the local authority thinks is reasonable. • It must be at least 21 days from the date at which the notice takes effect (see Annex E on service of documents) |
| | These are not legislative requirements but might be worth thinking about. | <ul style="list-style-type: none"> • Local authorities will want to consider the extent of the works required when deciding on a reasonable period for completion. For example, if a tenement block requires extensive works it may not be reasonable to specify a time of less than 6-9 months. • With such extensive works, the local authority may consider that the most appropriate (or effective) way to get the work done is for the local authority to arrange the works on behalf of the owners, and reclaim the costs. Local authorities may wish to advise owners of an interim deadline, for example of 2 months, for owners to respond to the local authority to indicate whether they wish them to carry out the work on their behalf, or to provide information of how they will undertake the work themselves. • In all cases, owners have the right to arrange to carry out the works themselves. |

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| Legislative reference | Requirements | Further information |
|-----------------------|---|---|
| s34 | The local authority can extend this period by a reasonable amount at any time | The local authority can extend this period by a reasonable amount at any time. But only where: <ul style="list-style-type: none"> • there has been satisfactory progress towards carrying out the work; or • the owner has given the local authority a satisfactory written undertaking to complete the work by a later date. |
| s30 (5) | Any particular steps to be taken in carrying out the work required | Local authorities can, but do not have to, include this. |

C.3. Additional information to consider giving to owners when local authority serves work notice:

| | |
|---------------------------|---|
| What support is available | <ul style="list-style-type: none"> • It would be good practice to advise owners what support may be available to them. • The local authority must provide assistance through its Scheme of Assistance for recipients of work notices. |
| HRA action plan | If the local authority is serving the notice to implement an HRA, it would be good practice to remind owners where they can view a copy of the HRA action plan. |

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Annex D Demolition Notice

D.1. Chapter 4 looks at what the Act says in relation to Demolition Notices. The following tables summarise the requirements for these notices.

D.2. The demolition notice must include the following (legislative requirements are shown in grey):

| Legislative reference | Legislative requirement | Further information |
|-----------------------|---|--|
| s33 (3) (a) | The reason for the requirement | <ul style="list-style-type: none"> • This will expand on the information in the HRA action plan. The plan will have identified the house as requiring demolition because it is in a state of serious disrepair. • If the action plan requires the demolition of a house for a reason other than serious disrepair, the local authority should serve the appropriate notice. This might include dangerous/defective building notice, or closing or demolition order under the 1987 Act. |
| s33 (3) (b) | The standard for the demolition, including any standard to which the site of the demolished house must be cleared | <ul style="list-style-type: none"> • The local authority will have considered this when drafting the HRA action plan. • It is up to the local authority to determine what standards to set out. But this should include any standard to which the site of the demolished house should be cleared. |
| s33 (3) (c) | The period to carry out the demolition (at least 21 days) | <ul style="list-style-type: none"> • This should be a period which the local authority thinks is reasonable. • It must be at least 21 days from the date when the notice takes effect (see Annex E Service Of Documents) |
| s34 | The local authority can extend this period by a reasonable amount at any time | <p>It can only do this where:</p> <ul style="list-style-type: none"> • there has been satisfactory progress towards carrying out the demolition; or the owner has given the local authority a satisfactory written undertaking to complete the demolition by a later date. |

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D.3. Additional information to consider giving to owners when local authority serves demolition notice:

| | |
|---------------------------|--|
| What support is available | <ul style="list-style-type: none">• It would be good practice to advise owners what support may be available to them.• The authority may choose to provide assistance to recipients of demolition notices, although they are not eligible for the Scheme of Assistance. |
| HRA action plan | <ul style="list-style-type: none">• Local authorities can only serve demolition notices to implement an HRA action plan.• It would be good practice to remind owners where they can view a copy of that HRA action plan. |

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Annex E Service Of Documents

- E.1. The 2006 Act gives local authorities new powers to deal with sub-standard housing. It will be important for local authorities to ensure that owners know what these powers are, and are aware when the local authority is using them. And there are some elements where the Act requires local authorities to serve notice of their decisions in a certain way.
- E.2. This annex looks at these situations, and the requirements which the Act sets out. It is non-statutory guidance. Authorities will want to consider how to manage these processes, and in all cases they should confirm with their own legal advisors that they are fulfilling the requirements of the Act. But they may find it useful to consider the overview which this annex provides.
- E.3. This annex looks only at the procedural requirements of serving notices. Chapters 3 and 4 of this guidance provide more information on what each notice should contain.

When, and to who, a local authority has to serve a document

- E.4. There are various situations where the Act requires local authorities to serve documents in a certain way.
- E.5. This annex looks in turn at the requirements in terms of:
- Part 1 Chapter 1: Housing Renewal Areas;
 - Part 1 Chapter 5: Repairs, Improvement and Demolition; and
 - Recovery of Expenses.
- E.6. There are also requirements for local authorities in relation to their powers under Part 1 Chapter 4 Repairing Standard. The Scottish Government has produced separate guidance on these powers. This is available via the website, at www.scotland.gov.uk.

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Housing Renewal Areas

E.7. The following table (Table 1) sets out the requirements for Housing Renewal Areas (Part 1 Chapter 1 of the Act):

| Reference | Situation | Who should receive the notice |
|------------|--|---|
| Sch 1 1(1) | Local authority proposes to designate an HRA | <ul style="list-style-type: none"> • to the owner and occupier of each house in an area; • to the planning authority (if that is not the local authority), where the house is <ul style="list-style-type: none"> ○ listed, ○ subject to a building preservation notice, or ○ covered by restrictions on demolition in conservation areas; • in at least 2 newspapers, at least one local if possible; and • in such other manner as the local authority thinks fit. It is up to the authority to decide, but examples might include a notice in local libraries, community centres or health centres. |
| Sch 1 1(3) | Local authority's decision whether or not to submit a draft HRA designation order to Scottish Ministers, following the period of public consultation | <ul style="list-style-type: none"> • to the owner and occupier of each house in an area; • to the planning authority (if that is not the local authority), where the house is: <ul style="list-style-type: none"> ○ listed, ○ subject to a building preservation notice, or ○ covered by restrictions on demolition in conservation areas; • in at least 2 newspapers, at least one local if possible; and • in such other manner as the local authority thinks fit. |
| Sch 1 3(1) | As soon as practicable after local authority makes HRA designation order | <ul style="list-style-type: none"> • to the owner and occupier of each house in the HRA; • in at least 2 newspapers (one of which to be local if possible); and • in such other manner as LA thinks fit. |
| s4(5) | If the local authority varies the HRA designation order | <ul style="list-style-type: none"> • any person whom it considers the variation is likely to affect; and <p>such other persons as it thinks fit.</p> |
| s5(4) | Local authority decides to revoke an HRA designation order | <ul style="list-style-type: none"> • to any person whom it considers likely to be affected by the revocation. |

E.8. Chapters 3 and 4 of this guidance set out what information these notices should contain and when these situations will arise.

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Work and demolition notices

E.9. The following table (Table 2) sets out the requirements for work and demolition notices (Part 1 Chapter 5 of the Act):

| Reference | Documents | Who should receive the notice |
|--|--|---|
| s62, and s30 (2); s31(3); s31(3); s32(2) | Work notice <ul style="list-style-type: none"> • Notice itself; • Suspension of work notice; • Lifting of suspension of work notice; • Revocation of work notice | <ul style="list-style-type: none"> • the owner and occupier of the house concerned; • any creditor holding a standard security over that house; • any person who receives rent in respect of that house, whether directly or indirectly; and • any other person whom the local authority considers to have an interest in that house. |
| s33(1), s62 | Demolition notice | |
| s34(3), s62 | Extension of period for completion of work notice or demolition notice | |
| s35(3), s62 | Inclusion of additional works when authority is to carry out a work notice or demolition notice | |
| s37 (2) | Notification for evacuation of premises when enforcing a work or demolition notice | <ul style="list-style-type: none"> • the occupant |

s62 (3) E.10. The local authority must serve notice on the owner and occupier. But it may be that the authority is unaware of the existence of any of the other people which this table sets out.

E.11. This will not invalidate the notice, so long as:

- the local authority has exercised its powers to identify owners under this Act; and
- after this, the authority is unaware of the existence of any person on whom it should have served the notice.

E.12. The powers to identify owners are set out in s186 of the Act.

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Recovery of expenses

- s59
(5)
- E.13. There is no statutory requirement to serve notice if the local authority wishes to recover expenses (see also Annex G), unless it wants to declare that the expenses will be recoverable in instalments. In this case it must serve notice on the owner of the property.
- E.14. But it would be good practice for local authorities to serve notice in all cases where they intend to recover expenses.
- E.15. It would also be good practice for the local authority to notify owners if it issues a repayment charge against their living accommodation.

How does a local authority serve notice?

- s187
(1), (2)
- E.16. Local authorities must serve notice in writing. This applies to any of the notices, orders or notifications which the tables above set out.
- s18
7 (6)
- E.17. This can include electronic means (such as e-mail), so long as it is legible and can be used for future reference.

When is a notice served?

- s62
(2)
- E.18. The document is served on the day on which it is served on the **owner** of the house.
- s187(3),
(4), (5)
- E.19. Any document is served on a person when it is either delivered or sent to, as the case may be:
(a) a person's place of business or usual or last known place of abode;
(b) the secretary, chief clerk or chief executive of an incorporated company or body at its registered or principal office; or
(c) the principal office of a public office-holder.
- s187
(3)
- E.20. If the notice is being issued by post it should be sent in a prepaid registered letter or by recorded delivery.
- s187
(3)
- E.21. The Act also deems a notice as being served if it was sent to the person in some other manner (including e-mail) which the sender reasonably considers likely to cause it to be delivered to the person on the same or next day.
- s187
(7),
(8)
- E.22. If the notice is sent by some means other than by delivery or post, for example e-mail, the Act treats it as having been delivered on the next working day (that is to say excluding Saturday, Sunday or a bank holiday in Scotland) after the day on which it was sent. But it will not be treated in this way if the contrary is proved.

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E.23. It would be good practice for the local authority to keep a record of such electronic correspondence.

s187
(9),
(10)

E.24. If the local authority is not able to find out the name or address of the owner or occupier, it can address a copy of the notice to “The Owner” or “The Occupier” and display it on or near the premises.

When does a notice take effect?

s63 (1)

E.25. A document takes effect from the date on which it is served.

s63 (2)

E.26. The only exceptions to this (in terms of Chapters 1 and 5 of the Act) are where the recipients of notices appeal against the decision set out in the notice to serve a work or demolition notice;

E.27. Annex F contains more information on rights of appeal, and the effect of appealing a notice.

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Annex F Appeals

- F.1. Chapter 5 of the 2006 Act gives local authorities powers to require owners to carry out work to, or demolish, their property in certain circumstances. They can also step in to enforce this work or demolition.
- F.2. The Act gives owners certain rights of appeal against various stages in these processes.
- F.3. This annex provides information on these rights of appeal. It is not statutory guidance, and in all cases local authorities should seek their own legal advice to ensure they are complying with the requirements of the Act. But local authorities may find it useful to consider the points which this annex makes.
- F.4. The local authority should consider when to provide information on people's rights of appeal. For example, it would be good practice to include this information when they serve notice of the decisions against which they can appeal.

Rights of appeal

F.5. There are rights of appeal against a number of decisions which the local authority can make when using its powers under Part 1 Chapter 5 of the Act.

s64
(1)

- F.6. For work and demolition notices, those decisions are:
- to serve a notice;
 - to carry out additional work when enforcing a notice, unless it is not necessary to serve a notice for this (see Chapter 4 and Annex E for further information);
 - to recover expenses following enforcement of notices (see Annex G for more information); or
 - to refuse to grant a certificate to confirm that a work notice has been completed.

F.7. The local authority must serve notice of each of these decisions. Annex E provides further information on the requirements for serving documents.

s64
(3)

F.8. Only the person on whom the local authority served the notice has the right to appeal.

s64(1)
s66(1)

F.9. That person will have 21 days to appeal to the sheriff by summary application. The 21 day period will start from the date on which the local authority served the notice (see Annex E for more information on when a document is served).

s64
(7)

F.10. But the sheriff can decide to hear the appeal after the 21 day period, if the authority or person can show cause for this.

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F.11. A person cannot approach the Ombudsman to investigate any of the decisions which F.6 sets out. The Scottish Public Services Ombudsman Act 2002 states that the Ombudsman must not investigate any matter where the person aggrieved has or had a remedy by way of proceedings in any court of law. This would be the case where an owner has the right to appeal under the 2006 Act.

Additional points regarding work and demolition notices

s66
(2)

F.12. The person should appeal at the point at which they disagree with the local authority's decision. For example, he or she could not raise questions regarding the decision to serve a work notice in an appeal against the recovery of expenses which the local authority incurred in carrying out that notice.

F.13. There is no right of appeal against a decision by the local authority to carry out a work or demolition notice. A person can only appeal where a local authority intends to include additional works when enforcing the notice. But there is no right of appeal if the local authority does not have to give notice of this additional work (see Chapter 4 for more information on enforcement).

F.14. People who are affected by a Housing Renewal Area (HRA) can appeal against the work or demolition notice which the local authority issues when implementing the HRA. Local authorities should ensure that they give all owners and other interested parties the opportunity to contribute their views both before and during the consultation phase of designating an HRA.

Outcomes of appeal and role of the sheriff

s65
(1)

F.15. Where a person makes an appeal, the sheriff can:

- confirm the decision which the local authority made, along with any consequence of that (for example, a maintenance order if the appeal was against the decision to serve it);
- quash the decision, or
- make any other decision as he or she thinks fit.

s65
(6)

F.16. The local authority or the person can appeal the sheriff's decision to the sheriff principal if it is in relation to a decision made in respect of work or demolition notices (as paragraph F.6). They must do this within 21 days of the sheriff's determination. The decision of the sheriff principal in such cases is final.

s65
(5)

F.17. If neither the local authority nor person appeals, the sheriff's decision is final.

s66
(4)

F.18. The sheriff has discretion as to what level of expense to award to whom. Similarly, the sheriff principal may make such an order in relation to any subsequent appeal.

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Effect of lodging an appeal

s63
(2),
(3)(a)

F.19. If a person appeals the decision to serve a work or demolition notice, the notice will not take effect until the person or authority abandons the appeal, or it is finally determined.

s63
(8) (b)

F.20. The appeal is finally determined on the last date on which the local authority or recipient of the notice can appeal the sheriff's determination to the sheriff principal. Or if the authority or person makes such an appeal, it will be finally determined on the date when the authority or person abandons the appeal or the sheriff principal determines it.

s63(9)
s64(7)

F.21. The last date when the authority or person can appeal the decision is 21 days after the authority serves the notice. The only exception to this is where the sheriff agrees to hear an appeal after this date. But this can only happen if he or she set that later date before the initial 21 day period was up.

s63
(3) (b)

F.22. The notice will have effect again from the day on which the appeal is abandoned or from when the decision is finally determined by confirming it.

s63 (7)

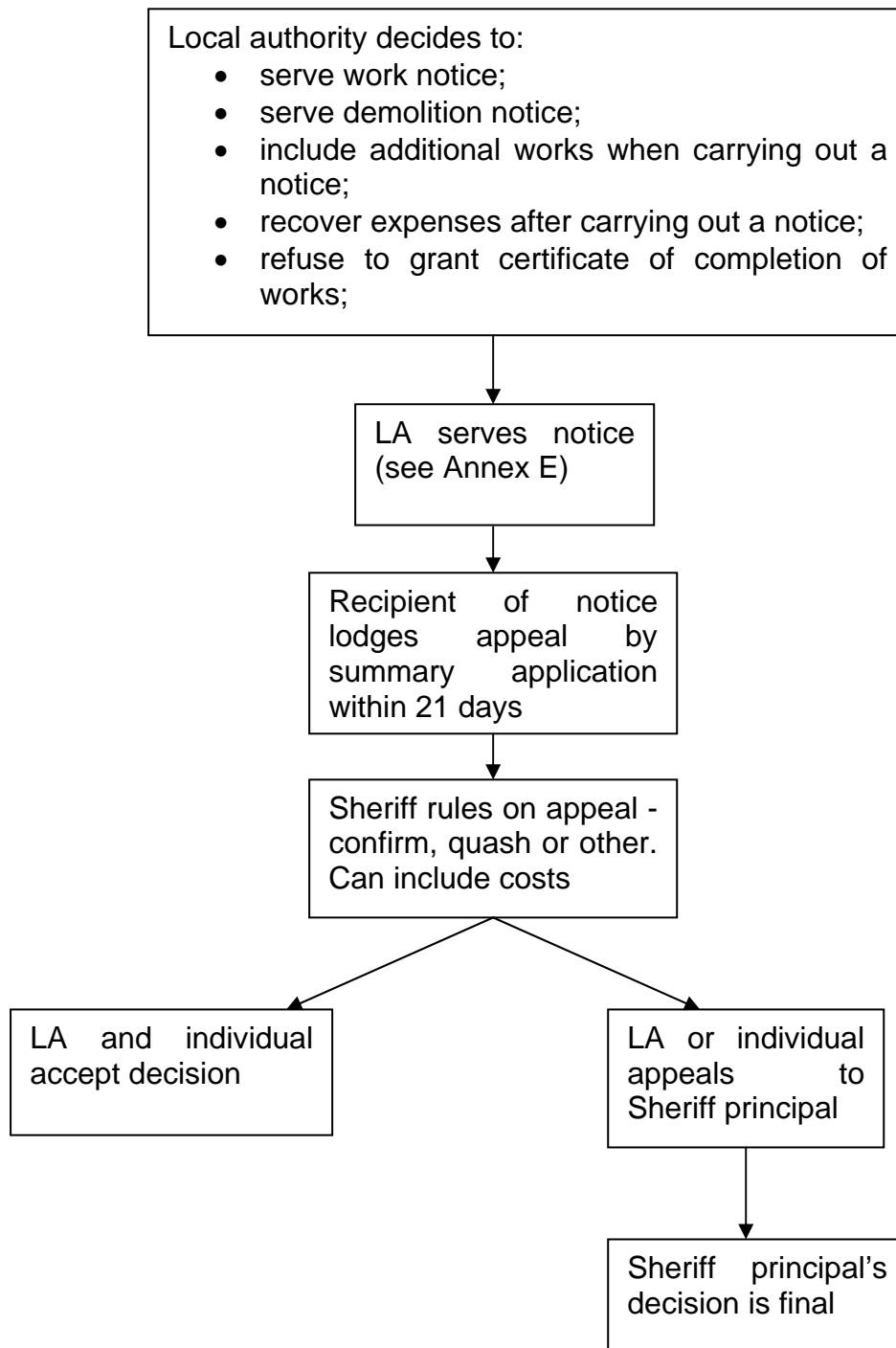
F.23. The local authority should not undertake any work or proceedings until:

- the last date on which the decision to make it may be appealed; or
- the date on which the appeal is abandoned or finally determined (by confirming the decision) where the authority or person has made an appeal.

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Summary of appeal process – work and demolition notices



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Annex G Recovery Of Expenses And Repayment Charges

Introduction

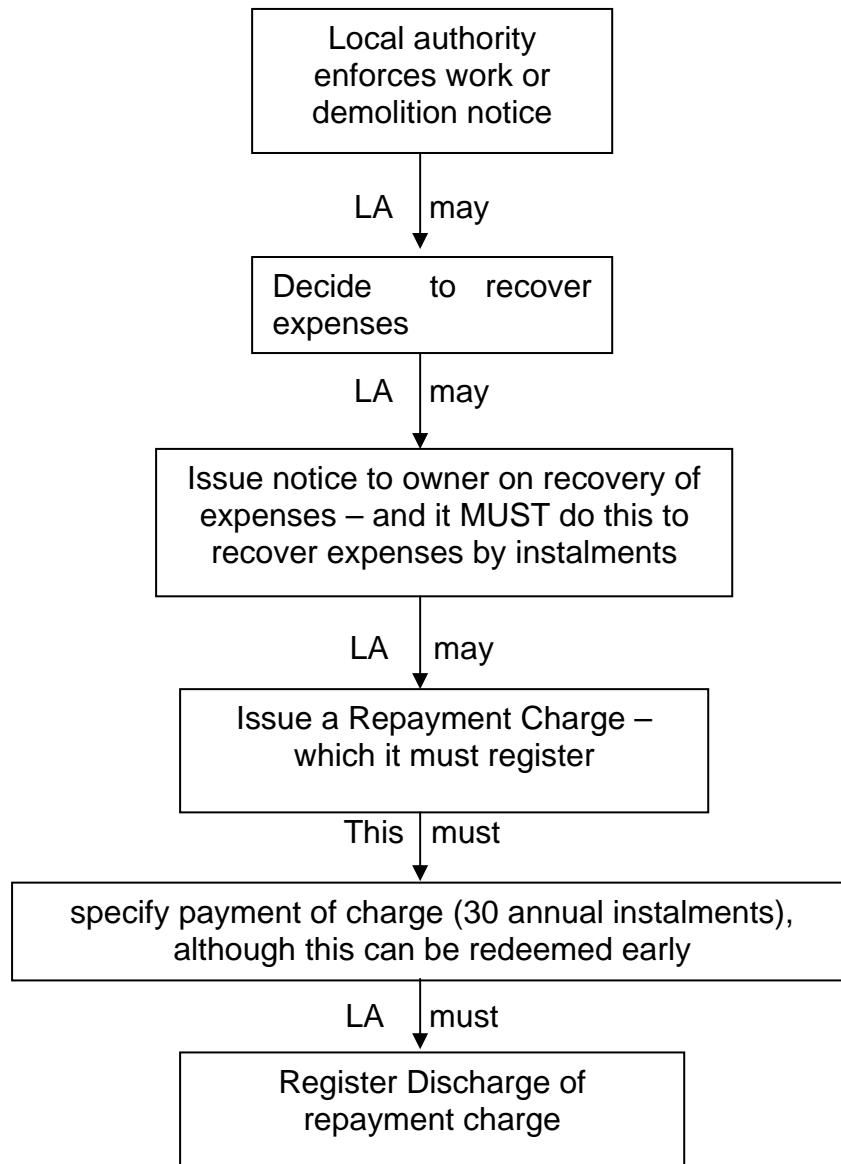
- G.1. Local authorities have new powers under the 2006 Act to enforce work and demolition notices when owners have failed to comply with them.
- G.2. The Act gives local authorities powers to recover costs from the owner in these situations.
- G.3. This annex provides information to local authorities on these new powers. This is non-statutory guidance, so local authorities do not have to have regard to it. It does not offer a legal interpretation of the Act, and local authorities should seek their own legal advice to ensure they are fulfilling the requirements of the Act.
- G.4. But authorities may find it useful to consider the issues which this annex looks at. We provide references to sections of the legislation in the left hand margin where the guidance is referring to specific requirements or powers in the Act.
- G.5. Local authorities can also recover expenses and issue repayment charges to recoup costs where they have enforced the repairing standard. The Scottish Government has produced separate guidance on this, which is available at www.scotland.gov.uk.

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Summary of new powers

G.6. The following flowchart summarises the key stages of the new powers to recover costs:



Notice to owner on recovery of expenses

G.7. The local authority will want to notify owners if it wishes to recover expenses in a lump sum (although there is no statutory requirement to do so).

G.8. And if the authority decides to allow payment by instalments, it must serve a notice on the owner of the house. This can include the owner of non-residential premises where the local authority has had to enforce a work or demolition notice, or carry out work as part of a maintenance plan. Annex E provides further information on the requirements for serving documents.

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G.9. The notice should set out the expenses which the authority is reclaiming from the owner.

s59
(1), (3)

G.10. These expenses can include:

- expenses which the local authority has incurred in carrying out work and demolition notices;
- any administrative expenses which the authority has incurred in connection with the works, or with the payment for the works; and
- interest, at such reasonable rate as the local authority determines. This can apply from the date when it serves a demand for payment until the whole amount is paid.

s59
(6)

G.11. But the expenses cannot include any costs incurred in demolishing a house which the local authority has acquired for demolition.

s59
(4)

G.12. The local authority can declare that owners are to repay these expenses in instalments.

G.13. It can decide the number and time period for these instalments.

s59
(1), (3)

G.14. The local authority will need to consider what costs it includes in the “administrative expenses”. But these expenses must be connected with carrying out work or demolition set out in a notice it is enforcing.

G.15. There is no standard form for local authorities to use when issuing a notice on recovery of expenses. But they should ensure that the form they use sets out the expenses that are due, any interest on these, and when instalments are due (if applicable).

Repayment charge

Part 7

G.16. The Act gives a local authority the power to issue a repayment charge against living accommodation to recover these costs. But it cannot issue a repayment charge if it has enforced a notice against non-residential premises. The local authority should pursue businesses through the courts in the usual way to recover these costs.

G.17. Local authorities should continue to issue charging orders under Schedule 9 of the Housing (Scotland) Act 1987 to recover costs where it has enforced notices under that Act.

s174
(a)

G.18. Scottish Ministers have specified the form for a repayment charge¹¹. Local authorities must use this form when issuing a repayment charge.

¹¹ Available at http://www.opsi.gov.uk/legislation/scotland/ssi2007/ssi_20070419_en.pdf

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s172
(1), (3)

- G.19. The standard form ensures that the repayment charge will:
- specify the repayable amount and the living accommodation which it applies to;
 - provide that the repayable amount is charged to that living accommodation; and
 - specify that it is repayable in 30 equal annual instalments.

s172
(2)

- G.20. The repayable amount is the lowest of:
- the expenses which the local authority has incurred in carrying out a work or demolition notice (including any administrative expenses and interest allowed by s59);
 - any lower amount which the local authority determines; or
 - any amount which Scottish Ministers prescribe by order.

G.21. At the point of publication of this guidance, Scottish Ministers have not prescribed such an amount. Local authorities will be advised if this happens.

G.22. The local authority does not have to issue a repayment charge in every case. For example, an owner might choose to pay off the full sum set out in the notice to recover expenses. Or he or she might agree with the local authority to pay off the amount in instalments as set out in the notice, where this is over a shorter time period than the 30 years which a repayment charge requires.

G.23. It will be up to the local authority to determine in each case whether or not to issue a repayment charge against the property.

Registration of repayment charge

s194
(6)

G.24. The local authority must register the repayment charge in the appropriate land register.

G.25. The authority should already have processes in place for identifying properties and registering notices in the register.

G.26. There will be a cost for registering repayment charges. As at autumn 2007, this was £30 per registration.

s173
(1), (2)

- G.27. The registration of the repayment charge by the local authority is proof that there is a charge against that living accommodation. A registered repayment charge has priority over:
- all future burdens and incumbrances on the same living accommodation; and
 - all existing burdens and incumbrances on the same living accommodation except any charges created or arising under:

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- any provision of the Public Health (Scotland) Act 1897 (c.38) or any Act amending that Act;
- any local Act authorising a charge for recovery of expenses incurred by a local authority;
- Schedule 9 of the 1987 Act (charging order);
- Section 172 of the 2006 Act (repayment charge); or
- any Act authorising advances of public money.

G.28. The repayment charge will remain on the property until it has been paid off or redeemed early (see payment of charge below for more information).

s173
(3), (4)

G.29. The local authority can enforce a registered repayment charge against any person whose name is on the title of the charged living accommodation. But this does not apply to:

- a third party who acquires right to the charged living accommodation (whether title has been completed or not) in good faith and for value before the repayment charge is registered; or
- any person deriving title from such a third party.

Payment of charge

s172
(3)

G.30. The repayment charge will specify that it is recoverable in 30 equal annual instalments, payable on the same date each year.

s172
(5)

G.31. But the person who owns the living accommodation, or any other person who has an interest in it, may pay the repayment charge off early. In this case the person and the local authority should agree the sum for the person to pay. If they cannot come to an agreement on this, the local authority and/or person should apply to the Scottish Ministers to determine the amount.

s174
(b)

G.32. Scottish Ministers can make any provision they think fit about the repayment or early redemption of amounts repayable under a repayment charge. They will do this by order. As at the publication of this document Ministers have not made any such provision. Local authorities will be advised if this happens.

Discharge of repayment charge

s172
(6)

G.33. Once the local authority has received the 30 instalments, or the owner or other interested party has redeemed the charge early, the local authority must register a discharge of the repayment charge.

G.34. Scottish Ministers have specified the form in which the discharge of a repayment charge should be¹². Local authorities must use this form.

¹² http://www.opsi.gov.uk/legislation/scotland/ssi2007/ssi_20070419_en.pdf

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G.35. Again, there will be a charge for registering this (see paragraph G.26).

s173
(5)

G.36. Registering the discharge serves as evidence that the repayment charge has been repaid.

Summary of Key Points

Local authorities can recover costs from owner for enforcement of work notice or demolition notice.

Notice should be sent to the owner of the house.

Local authorities can issue a repayment charge to recover these expenses:

- authority must register it, using the form which SSI 2007/419 sets out;
- charge stays on the property until it is paid off;
- specifies 30 annual instalments; although
- can be redeemed early by owner or other interested parties;
- authority must register discharge when charge has been paid off or redeemed, using the form which SSI 2007/419 sets out.

Local authorities should continue to use charging orders to recover costs for work under the 1987 Act.

হাউজিং (স্কটল্যান্ড) এ্যাক্ট ২০০৬: আঞ্চলিক কর্তৃপক্ষের জন্য নির্দেশিকা
আলাচনামূলক পরামর্শের জন্য খসড়া
ঘরবাড়ী নবায়নের ক্ষেত্র এবং মেরামত, উন্নয়ন এবং ভেঙ্গে ফেলা

《住宅法（苏格兰）2006》：面向地方政府的指南，咨询草案 住宅维护

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قانون الإسكان (اسکوتلنڈ) لعام ٢٠٠٦ : إرشادات للسلطات المحلية - مسودة
للتشاور

مناطق التجديد والإصلاحات والتحسينات والهدم للمنازل السكنية

Ustawa o Zakwaterowaniu dla Szkocji z 2006 r.: Wskazówki dla władz lokalnych.
Projekt porozumienia
Zakres renowacji i napraw, udoskonalenia oraz wyburzanie

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(ਕੱਚਾ ਦਸਤਾਵੇਜ਼)
ਰਿਹਾਇਸ਼ੀ ਨਵੀਕਰਣ ਦੇ ਖੇਤਰ ਅਤੇ ਮਰੰਮਤਾਂ, ਸੁਧਾਰ ਕਰਨੇ ਅਤੇ ਢਾਅਣਾਂ

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