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Maintenance



April 2008

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

Volume 3

Maintenance

MAINTENANCE

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; and• 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 new powers to issue maintenance orders requiring maintenance plans, and to pay money into maintenance accounts in certain circumstances;• provide an overview of the requirements in terms of the service of documents, appeals, recovery of expenses and repayment charges;• 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 maintaining their properties. But where this is not happening, the Housing (Scotland) Act 2006 gives local authorities new powers to make owners maintain them.
- Local authorities can issue a maintenance order where owners have not, or are unlikely to, maintain their house to a reasonable standard. They can also issue one if the benefit of a work notice or repairing standard enforcement order has been reduced or lost because of a lack of maintenance.
- The order requires the owner to submit a maintenance plan, which will secure the maintenance of the house for up to five years. Owners are responsible for implementing it. But the authority can step in to enforce it if the owner fails to do so.
- Local authorities will also have new powers to pay money into maintenance accounts in certain situations.
- The Act specifies requirements for how local authorities should serve notice of certain decisions it makes under Chapter 6.
- It also gives owners rights of appeal against certain decisions.
- And it gives powers to local authorities to recover costs (including issuing a repayment charge against the property), where they have had to take action to enforce a maintenance plan.

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CONSULTATION

This guidance provides information on the new maintenance powers, and highlights some issues which local authorities might wish to consider when implementing the new powers. It also draws out some good practice suggestions to help local authorities to prepare for the new powers.

The sections on local authorities' powers to pay in a missing share to maintenance accounts are statutory guidance. Local authorities must have regard to this guidance when using these powers.

The rest of this guidance is non-statutory/advisory.

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 and B help you to produce the appropriate documents?

Q3 Any other comments?

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Introduction

1. Owners are responsible for looking after their properties. The Housing (Scotland) Act 2006 gives local authorities new and updated powers to enable them to take action where owners are not fulfilling these responsibilities.
2. In all cases it would be good practice for local authorities to contact owners as soon as they identify a problem. This will ensure that owners are aware of the issue, and in some cases this might be enough to encourage owners to act.
3. If the local authority takes statutory action under the 2006 Act, it should be aware of any requirements to provide support under its Scheme of Assistance.
4. Local authorities should ensure that they eliminate unlawful discrimination and promote equality of opportunity. They should observe the requirements of relevant equalities legislation at all times when exercising the new powers under the Act.

Housing Renewal Areas and Repair, Improvement and Demolition

5. Under the 2006 Act, local authorities can designate a Housing Renewal Area (HRA) where there is a significant number of sub-standard houses, or any house is adversely affecting the amenity of the area. They will also be able to serve a work notice on any house which is sub-standard, whether or not it is within an HRA. A house will be sub-standard if it is below the tolerable standard, in a state of serious disrepair, or in need of repair and likely to deteriorate rapidly or cause damage to other premises if nothing is done to repair it.
6. We have produced separate guidance on the new HRA and work notice powers (Volume 2) We have also produced guidance on the tolerable standard (Volume 4). These will be available via our website, www.communitiesscotland.gov.uk.

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7. In addition to HRAs and work notices, the Act introduces new powers for local authorities to deal with houses in the private sector which owners have not maintained, or are unlikely to maintain, to a reasonable standard. This will help local authorities to intervene before a house becomes sub-standard.
8. A local authority can serve a maintenance order on the owner of a house. The order requires the owner to develop a maintenance plan for the property, for up to a five year period. The local authority will be able to step in to enforce that plan, if the owner fails to carry out the maintenance which the plan sets out. It will also be able to recover the costs from the owner.

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9. The Act also gives local authorities a new power to pay money into maintenance accounts in certain circumstances.
10. This document provides guidance on these maintenance powers which Chapter 6 of the Act introduces. We have 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/webpage_s/cs_016362.hcsp.

Structure of this guidance

11. There are five main chapters in this guidance:
 1. What Is "Maintenance"?
 2. Maintenance Order
 3. Maintenance Plan
 4. Carrying Out The Maintenance Plan
 5. Maintenance Accounts
12. There are two annexes which provide some advice to local authorities if they decide to produce templates:
 - Annex A Considerations For Designing A Maintenance Order
 - Annex B Considerations For Designing A Maintenance Plan
13. And there are a further three annexes which look at some more technical requirements of the Act in relation to the maintenance powers:
 - Annex C Service Of Documents
 - Annex D Appeals
 - Annex E Recovery Of Expenses And Repayment Charges
14. Paragraphs 5.4 to 5.8 and 5.21 to 5.40 of Chapter 5 are statutory guidance (relating to powers under s50 of the Act). Local authorities must have regard to this guidance when using their powers to pay missing shares into maintenance accounts.
15. The rest of this guidance is non-statutory/advisory. Local authorities do not need to have regard to these chapters, but we have developed it to support them in their implementation of the new maintenance powers.
16. Chapters 2 to 5 are divided into two parts:
 - The first part of each chapter provides an overview of the legislative requirements set out in the Act, with references to the appropriate sections of the legislation in the left hand margin. But the local

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authority should seek its own legal advice to ensure that it is implementing the requirements of the Act, and should not rely solely on what this guidance sets out.

- The second part of each chapter makes good practice suggestions, or highlights some policy issues which each local authority will want to think about when implementing the Act. These parts take account of feedback from local authority representatives who attended events we held in June 2007 to discuss the new maintenance powers. More information on these events is available via our website at www.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/cs_019743.hcsp.

Chapter 1 What Is “Maintenance”?

Legislation

s194
(1)

1.1. The Act defines “maintenance” in the following way:

“maintenance” includes repairs and replacement, cleaning, painting and other routine work, gardening, and the reinstatement of part (but not most) of premises (but does not include demolition, alteration or improvement, or any internal decoration of any part of premises which are not owned in common, unless reasonably incidental to any such repairs etc.); and “maintain”, “maintaining” and other cognate words are to be construed accordingly.

1.2. This is similar to the definition which the Tenements (Scotland) Act 2004 already uses.

s194
(1)

1.3. Local authorities should be aware that the definition of “work” in the Act includes maintenance, repair and improvement, and excludes demolition.

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Policy and Good Practice

- 1.4. There is overlap between the definitions of “maintenance” and “work”. A local authority might identify a poor quality house which could potentially benefit from a work notice or a maintenance order.
- 1.5. In all cases the local authority should contact the owners in the first instance to find out whether they are aware of the problem. It should ensure it considers equalities issues when making contact with owners. But if it decides that it needs to take statutory action under the 2006 Act, the local authority will need to think about how it will determine which power to use.

Considerations for identifying appropriate intervention

- 1.6. It will be up to the local authority to decide which route it takes, but it may wish to consider:
 - the **urgency** of the problem. Work notices are one-off interventions, which might be useful to address a pressing problem, for example where overflowing or cracked gutters are causing dampness. Maintenance orders and plans enable local authorities to take a longer term approach to the maintenance of properties. For example, the local authority might want to see regular gutter cleaning as part of a maintenance plan for the property.
 - the **nature** of the problem. Local authorities can serve work notices only on houses which are sub-standard. It may be that although an owner has not maintained their property, it is not “sub-standard” in terms of the definition in the Act. To be sub-standard a property must be below the tolerable standard, in serious disrepair, or in need of repair and likely to deteriorate rapidly or damage other premises if nothing is done to repair it (see also Volume 2 of our guidance on Housing Renewal Areas and Repair, Improvement and Demolition).
 - whether the local authority is looking to see the property “**improved**” – although the definition of “maintenance” can include work, it cannot include improvement. So if the local authority thinks the intervention will be to improve the property, it could not use a maintenance order.
 - whether it is an **isolated** case, or if there are a number of houses in the same situation. If there are several houses it might be appropriate to deal with the issues on an area basis, by designating a Housing Renewal Area (HRA) and serving work notices.
 - what the **aim of the intervention** is. For example, the local authority may wish to use work notices to deal with one-off or short term problems. Maintenance orders and plans are a way to try to secure the

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maintenance of the house for a longer period. They can potentially include more elements than work notices, which are likely to relate more directly to what caused the problem.

- **resources.** Local authorities will have a role to play in monitoring (and potentially enforcing) maintenance plans, which can last for up to five years.

1.7. In all cases, the local authority should ensure that it has evidence to back up its decision to take a particular action.

Chapter 2 Maintenance Order

Legislation

What is a maintenance order?

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- 2.1. A maintenance order requires the owner of a house to produce a maintenance plan. The plan should maintain the house to a reasonable standard.
- 2.2. The order will specify the period of time the owner will have to submit the plan to the local authority for approval.
- 2.3. The order can require the plan to cover up to a five year period.

s45
(1)

- 2.4. The order can require owners to prepare a joint maintenance plan if it relates to two or more houses.
- 2.5. There is no standard form for a maintenance order.

When can the local authority use a maintenance order?

s42
(2)

- 2.6. The local authority can serve a maintenance order on a house which the owner has not maintained to a reasonable standard, or if it considers that the owner is unlikely to maintain the property to a reasonable standard.

s42
(2)

- 2.7. It can also serve a maintenance order on a house where there has been work as part of a work notice or repairing standard enforcement order. But it can do this only if the benefit of that work has been reduced or lost because of a lack of maintenance.

s194
(1)

- 2.8. The Act defines “house” as any living accommodation which is, or which is capable of being, occupied as a separate dwelling. But this does not include mobile homes, or any other living accommodation which is not a building.

- 2.9. The definition of “house” 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.

s69

- 2.10. Local authorities can issue maintenance orders to the owners of non-residential premises. But they can do so only if the work is needed to secure the maintenance of any house which forms part of the same building.

s193

- 2.11. Local authorities will also wish to note that the 2006 Act binds the Crown. This means that they do not need the consent of the Crown before serving a

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notice on a house which it owns, for example on Ministry of Defence housing.

- s181
-184
- 2.12. Local authorities have rights of entry to premises (including adjacent land and premises) at any reasonable time for deciding whether it is appropriate to serve a maintenance order. 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 from the local authority.

What else does the local authority have to do to use maintenance orders?

- s62,
63
- 2.13. The local authority should issue the maintenance order to the owner of the house. It should consider the requirements of the Act in terms of serving a document (see Annex C Service Of Documents for more information).

- s61,
63(7)
- 2.14. The local authority must register the maintenance order with the appropriate land register. But it does not have to do this until after the period for appeal has passed, or the appeal (if made) has been abandoned or finally determined.

- s46
(6)
- 2.15. The maintenance order will cease to have effect when the local authority registers the maintenance plan.

- s64-
66
- 2.16. Owners can appeal the decision to serve a maintenance order within 21 days of receiving notice of the order (see Annex D Appeals for more information).

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Policy and Good Practice

- 2.17. There is no standard form which local authorities must use when they issue a maintenance order. But there are certain things which a maintenance order must include to satisfy the legislation and to enable registration.
- 2.18. This chapter sets these out, as well as highlighting things which it would be useful for local authorities to consider when designing a maintenance order. It also considers what information local authorities might want to provide to owners when they get a maintenance order. Authorities should also consider the different needs of owners when providing information, for example by using translation, interpretation or alternative formats.
- 2.19. For ease of reference, the tables in Annex A summarise the points which this chapter raises.

What is a maintenance order?

Reasonable standard

- 2.20. The maintenance order will require the owner to submit a maintenance plan to secure the maintenance of the house to a “reasonable standard”. The Act does not define this term, but the local authority may, for example, wish to make reference to the standard of similar properties in the area (see also paragraph 2.31). We cover this further in the Maintenance Plan good practice section (3.61-3.66).
- 2.21. However the local authority chooses to define “reasonable standard”, it should provide information to owners on this when it serves a maintenance order. This will enable the owner to produce an appropriate maintenance plan.

Time frame for the maintenance plan

- 2.22. The maintenance order can require a maintenance plan to cover up to a five year period.
- 2.23. Local authorities can decide how long the maintenance plan should cover, so long as this is no more than five years. Local authorities will want to consider:
- whether they will always stipulate a certain amount of time - and if so, whether that will be the full five years or a shorter period; or
 - whether to have a degree of flexibility, for example setting different time periods depending on the individual circumstances of each maintenance order.
- 2.24. Local authorities will want to consider the resource implications when deciding how long the plan should cover. The authority will have a role to

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play in monitoring, and potentially implementing, maintenance plans throughout their full duration.

- 2.25. Authorities will also want to think about the effectiveness of the maintenance plan. For example, if the house is in an area of high turnover then the local authority might prefer to require a plan for the full five year period to ensure consistent maintenance of the property.

Deadline for submission of maintenance plan

- 2.26. The Act does not specify how long the maintenance order should give owners to submit their maintenance plans to the local authority for approval.

- 2.27. Local authorities will want to decide on a time period which is reasonable. This might depend on:

- whether the local authority is providing a template for the maintenance plan;
- how detailed the plan is to be;
- the complexity of the problem(s) with the house which the local authority has identified;
- whether it is requiring owners to involve professionals in drawing it up, for example in case the owner needs time to get several quotes; and
- whether assistance is available through the local authority's Scheme of Assistance.

- 2.28. See also the Policy and Good Practice section of Chapter 3 for more information on the content of the plan.

- 2.29. The local authority will be responsible for devising plans where owners do not comply with maintenance orders. So it will be important that local authorities give owners a realistic amount of time to submit their plans. Otherwise the local authority may end up having to produce an excessive number of maintenance plans itself (see also Chapter 3 Maintenance Plan).

When can the local authority use a maintenance order?

Previous maintenance

- 2.30. Local authorities can serve a maintenance order where an owner has not, or is unlikely to, maintain his or her house to a reasonable standard. Paragraphs 2.20 and 2.21 highlight that the Act does not define this term.

- 2.31. The local authority will want to devise a framework for assessing what a "reasonable standard" is, so that it can justify its decision for serving a maintenance order (owners can appeal against that decision (see Annex D Appeals for more information). This will also help local authorities when assessing plans which owners have submitted, since the plan must also

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secure the maintenance of the property to a “reasonable standard” (see also 3.61-3.66 on assessing the plan).

- 2.32. There is nothing to stop local authorities making reference to the local area when determining what standard is reasonable. But the local authority will want to ensure it can defend its decision.

Link to work notices

- 2.33. Local authorities can serve a maintenance order where the benefit of a work notice has been reduced or lost due to a lack of maintenance.
- 2.34. Local authorities will not be able to serve work notices until Chapter 5 of the 2006 Act is in force. So it may even be several years before a local authority can issue a maintenance order under this category. There will need to have been sufficient time for the local authority to have issued the work notice, for the owner to have implemented it, and for the benefit of it to have been reduced or lost due to poor maintenance.
- 2.35. So there is no automatic follow-on between a work notice and a maintenance order. Local authorities can issue a maintenance order immediately after a work notice only if they are satisfied that the house is unlikely to be maintained to a reasonable standard. For example, the local authority might decide to take this view if it had issued the work notice to fix a problem which had been caused due to a lack of maintenance, and there was no evidence to suggest that the owner’s attitude had changed.
- 2.36. As there is likely to be an element of subjectivity to this decision, it will be important for the local authority to have the evidence to support it, in order to justify it if the owner appeals.
- 2.37. Local authorities might also want to think about what information they give to owners who receive work notices. For example, the local authority could provide information at the point of completion of the work notice on what maintenance is needed, and how to go about it. Authorities should ensure owners are aware of what can happen if they do not maintain their property, that is to say that the local authority can serve a maintenance order.
- 2.38. The local authority might also want to consider how it will monitor houses where there have been work notices. This might enable it to approach owners as soon as a problem starts to develop. This could prevent the local authority having to serve a maintenance order at a later date.

Link to repairing standard enforcement order

- 2.39. Local authorities can also issue a maintenance order where the benefit of a repairing standard enforcement order has been reduced or lost through a lack of maintenance.

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- 2.40. The Private Rented Housing Panel will inform each local authority about all repairing standard enforcement orders issued in its area, which will alert the local authority to buildings where there could be problems, even if the necessary work was carried out by the landlord, not the local authority. The authority will want to consider what information it gives to landlords to advise that it can use a maintenance order if they do not maintain their property.
- 2.41. The Repairing Standard powers came into force in September 2007. The Scottish Government has produced separate guidance on these powers, which is available via the website at www.scotland.gov.uk.

Identifying houses

- 2.42. Local authorities will want to think about how they will identify potential houses for maintenance orders.
- 2.43. It is likely that information will come from a variety of sources. Local authorities might already be aware of houses, or members of the public might highlight properties to them. Authorities will need to decide how they will manage and/or prioritise these cases.
- 2.44. The local authority might choose to be proactive in identifying houses for maintenance orders. It will want to think about what information it already has, and what resources are available if it wants to gather more.
- 2.45. Some possible sources of information might be:
- local house condition survey – either through looking at existing surveys, or commissioning add-on local surveys to get more detail. Local authorities would need to think about resources for this.
 - existing databases, for example of previous grant recipients. This might highlight clusters of properties which would benefit from longer term maintenance work. Local authorities may already be monitoring these properties as part of the conditions of grant. This might also mean that the authority will have evidence of the property's previous state (that is to say from the standard on completion of the notice) to compare to its current state.
 - other databases, for example environmental health.
- 2.46. Local authorities will want to think about how to manage these processes, for example in terms of coordinating information from a variety of sources. They will also want to think about how to manage the information in terms of deciding on what is the more appropriate response (see paragraphs 2.49-2.55).
- 2.47. The local authority should also decide what will trigger a maintenance order. The definition of "house" can include gardens, yards and so on, as well as the living accommodation itself. The local authority may wish to develop a

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policy on what elements of the house will trigger intervention, for example whether it can be a single element or only where there are several problems.

- 2.48. If the local authority exercises its rights of entry to premises to identify whether a maintenance order is needed (as paragraph 2.12) it should consider any equalities issues in advance of giving notice of this.

Using maintenance orders

- 2.49. A local authority does not necessarily have to issue a maintenance order on every house which it has identified as not being maintained to a reasonable standard.
- 2.50. In all cases it would be good practice for the local authority to get in touch with the owner in the first instance. He or she might not be aware that there is a problem, and the threat of a maintenance order might be enough to rectify the situation. Or there may be something the local authority can do to help without having to take statutory action, for example providing information or advice under the Scheme of Assistance or other advice services.
- 2.51. Even if the owner starts to take responsibility at this stage, the local authority might want to think about how it will continue to monitor the property. For example, it might be appropriate to revisit the property after a reasonable period to check that the owner is continuing to maintain it.
- 2.52. If the local authority decides that it does need to intervene, it will want to ensure it has systems in place to assess what the most appropriate statutory action would be.
- 2.53. Chapter 1 considered the potential overlap between maintenance orders and work notices. Local authorities will want to make reference to their policy for assessing the appropriate response, taking account of the issues which paragraph 1.6 sets out, when deciding what action to take. Maintenance orders potentially commit the local authority to staff resource for up to five years, from issuing the maintenance order through to assessing, monitoring and potentially implementing the plan.
- 2.54. It is also possible that it is more appropriate to deal with the problem using powers other than those under the 2006 Act. For example, environmental health powers might overlap with some issues of poor maintenance.
- 2.55. It will therefore be important for the local authority to have structures in place to assess the appropriate response once it has identified issues of poor maintenance. And this is likely to include a wide range of colleagues, for example from private sector housing, environmental health, and finance (in

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terms of identifying the need for the authority to be committed to seeing the maintenance orders and plans through to completion from the start).

What else does the local authority have to do to use maintenance orders?

Service of documents

- 2.56. The local authority must serve the maintenance order on the owner of the house, as it is the owner who is responsible for drawing up the maintenance plan.
- 2.57. There is more information on this in Annex C Service Of Documents.

Register

- 2.58. The local authority is responsible for registering the maintenance order in the appropriate land register. But it does not need to do this until after the period for owners to appeal (21 days from the service of notice), or until any appeal is abandoned or finally determined.
- 2.59. It is likely that the local authority will already have systems in place to register documents with Registers of Scotland, and should be familiar with the processes for identifying properties and registering documents. It should ensure that it notifies Registers if different people will be involved in the registration of the maintenance documents. If local authorities wish further guidance on how to register documents they can contact Registers of Scotland at customer.services@ros.gov.uk.
- 2.60. To enable registration, Registers of Scotland have advised that the maintenance order will need to identify the property:
- if the property is in the Land Register, the maintenance order must include the title number of the property. If it is part of a registered title, the order will need to describe the property sufficiently to identify it as a separate unit, for example “southmost flat on first floor of tenement 5 Union Street, Aberdeen part of Title Number ABN1234”;
 - if the property is in the register of Sasines, the maintenance order must include a description of the property, such as a particular reference or description.
- 2.61. For properties in the Land Register, the owner may be able to provide the Land Certificate to show the title number. But if not, the local authority should be able to identify this using Land Register Direct (if they are a registered user).
- 2.62. Local authorities should already have systems in place for identifying properties on the Register of Sasines, for example through a private search company.

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- 2.63. The local authority will be responsible for the costs of registering maintenance orders. As at autumn 2007, the cost of registering a document was £30. Each search on Registers Direct costs approx £5. There is no provision in the Act for the local authority to charge the owner for these costs.
- 2.64. The local authority does not have to de-register the maintenance order when it registers the maintenance plan.

Appeals

- 2.65. Owners have 21 days to appeal the decision to serve a maintenance order. It would be good practice for the local authority to ensure that owners are aware of this, for example by including information on this (such as their rights, timescales) when it serves the maintenance order.
- 2.66. Local authorities should think about how they will respond to appeals from owners. This might include deciding who will be responsible for monitoring the process of the appeal.
- 2.67. As mentioned above, it will be important for authorities to ensure they have sufficient evidence throughout the process in case owners appeal.

Chapter 3 Maintenance Plan

Legislation

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What is a maintenance plan?

- 3.1. The maintenance plan is a document which sets out a programme of work to secure the maintenance of a house to a reasonable standard.
- 3.2. It will cover up to a five year period, as set out in the maintenance order.
- 3.3. The owner of the house should produce the plan and submit it to the local authority for approval by the date set out in the maintenance order.

s43

What should be in the maintenance plan?

- 3.4. The plan must specify:
 - what maintenance is to be carried out throughout the period of the plan;
 - any steps to be taken to carry out this maintenance;
 - when these steps are to happen; and
 - an estimate of the likely costs.
- 3.5. The “steps” can include the repair or replacement of anything which is to be maintained under the plan.

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Joint maintenance plans – extra provision

- 3.6. If there are two or more houses in any premises, the maintenance order can require the owners to produce a joint maintenance plan. The plan can cover any part of the premises, including (but not restricted to) parts which the owners own in common.
- 3.7. In this situation, the maintenance plan must also apportion the liability of each joint owner in respect of the costs of implementing the plan in such manner as the owners of those houses think fit. But this cannot go against any real burdens (as set out in the title deeds), development management scheme (DMS) or tenement management scheme (TMS).
- 3.8. The maintenance plan may also:
 - apportion responsibility for maintaining the houses to which the maintenance plan relates in such manner as the owners of those houses think fit, or as the authority thinks fit if it devises the plan (see paragraphs 3.18 and 3.19) – although this cannot go against anything in the title deeds, DMS or TMS;
 - require those owners to appoint a person to manage the implementation of the plan;

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- require those owners to open, and deposit sums into, a maintenance account;
 - set out the arrangements for operating a maintenance account (including arrangements for authorising withdrawals from it and for winding up and closure).
- 3.9. A joint maintenance plan can set out maintenance for any areas of the property which a person owns or has responsibility for by virtue of a real burden or otherwise. So a joint maintenance plan can cover areas of the premises which owners do not own communally.
- 3.10. But in this case, the maintenance plan cannot apportion costs or responsibility to owners if they do not own that part or have a responsibility by virtue of a real burden.

s46

What happens once the owner submits the plan?

- 3.11. The owner should submit the maintenance plan to the local authority by the date set out in the maintenance order.
- 3.12. The local authority should then assess the plan. It can either approve it or reject it.

Assessment

- 3.13. The aim of the plan is to secure the maintenance of the house to a reasonable standard. So the local authority will want to satisfy itself that the plan will achieve this.
- 3.14. For the local authority to approve the plan, it must contain the elements which paragraph 3.4 sets out.
- 3.15. If it is for two or more houses, it must also meet the requirements for apportioning responsibility (as paragraphs 3.6-3.10). The authority will have to satisfy itself that this does not go against anything in the title deeds, DMS or TMS. A majority of owners must also have agreed to the maintenance plan before the local authority can approve it.
- 3.16. The local authority can approve the plan, with or without modifications. For example, the local authority might be satisfied that the plan will maintain the house to a reasonable standard, but is not content with the way the plan apportions costs. In this case it could approve the plan, but with amendments to the costs each owner will be liable for.
- 3.17. If the local authority decides that a plan is not suitable, it can reject it. It can then devise a maintenance plan of its own for the house. Or it can issue another maintenance order to require the owner to submit a new maintenance plan.

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s46
(1)(c) What happens if the owner does not submit the maintenance plan by the date set out in the maintenance order?

- 3.18. The local authority can devise a maintenance plan if the owner of the house does not submit one in time.
- 3.19. But it can only do this once the date which the maintenance order specifies for submission has passed - the local authority must give owners the opportunity to draw up the plan themselves in the first instance.

What else does the local authority have to do to use maintenance plans?

s46
(4),(5) 3.20. The local authority must notify owners of its decision to approve or reject a plan. If it has modified the plan, or substituted one of its own devising, it must include a copy of the plan with the notice.

s46
(4), 5) 3.21. The local authority must also notify the owner if it has devised a plan where the owner did not submit one. Again, this should include a copy of the plan.

3.22. Annex C Service Of Documents gives more information on what the local authority needs to do when serving a notice.

s61,
63(7) 3.23. The local authority must also register all plans which it has approved or devised with the relevant register (there will be a charge to do this). But it does not have to do this until after the period for appeal has passed, or the appeal (if made) has been abandoned or finally determined.

s46
(6) 3.24. Once the local authority has served notice of its decision to approve, reject or devise a maintenance plan, the maintenance order relating to that house will no longer have effect.

s47 Varying the maintenance plan

3.25. The local authority can vary a maintenance plan at the request of the owner, or of its own accord.

3.26. It can vary the maintenance plan at any time if there is a change in circumstances which justifies the variation.

3.27. It can also vary the maintenance plan before it enforces it (see Chapter 4 Carrying Out The Maintenance Plan).

s62 3.28. Again, the local authority must notify the owner of any variation. The notice should include a copy of the varied plan (see Annex C Service Of Documents for more information).

s61
(1) (e) 3.29. It must also register the varied plan.

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Revoking the maintenance plan

s47

3.30. The local authority can revoke a maintenance plan if it is satisfied at any point that it is no longer feasible to implement the plan. But it must be sure that it is not possible to vary the plan in order to make it practicable before it takes the decision to revoke it.

s62,
61
(1)(f)

3.31. The authority must serve notice of revocation (see also Annex C Service Of Documents), and register the notice of revocation in the appropriate land register.

Appeals

s64-
66

3.32. Owners can appeal against the decision to approve or devise a maintenance plan. They can also appeal against any variation or revocation of a maintenance plan. The right to appeal lasts for 21 days from the date the notice is served. There is more information on the appeals process in Annex D Appeals.

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Policy and Good Practice

What is a maintenance plan?

- 3.33. The maintenance order will have set out how long the maintenance plan is to cover, and how long owners will have to submit a plan to the local authority. The maintenance order chapter contains some good practice suggestions for local authorities when deciding on these timescales.

Standard form?

- 3.34. There is no standard form for a maintenance plan. But the local authority might find it useful to provide a template for owners when it issues a maintenance order, to help them to put together a plan which the local authority is likely to approve.
- 3.35. The local authority could also use this template if it has to devise a plan, either because the owner's plan is unsuitable, or because he or she hasn't submitted a plan by the date which the order specifies.
- 3.36. If the local authority produces a template, it will need to ensure that the plan covers the minimum requirements set out in paragraphs 3.4-3.10. It will also want to consider what it will be looking for when it assesses plans, as this will affect the design of the form.

Information to owners

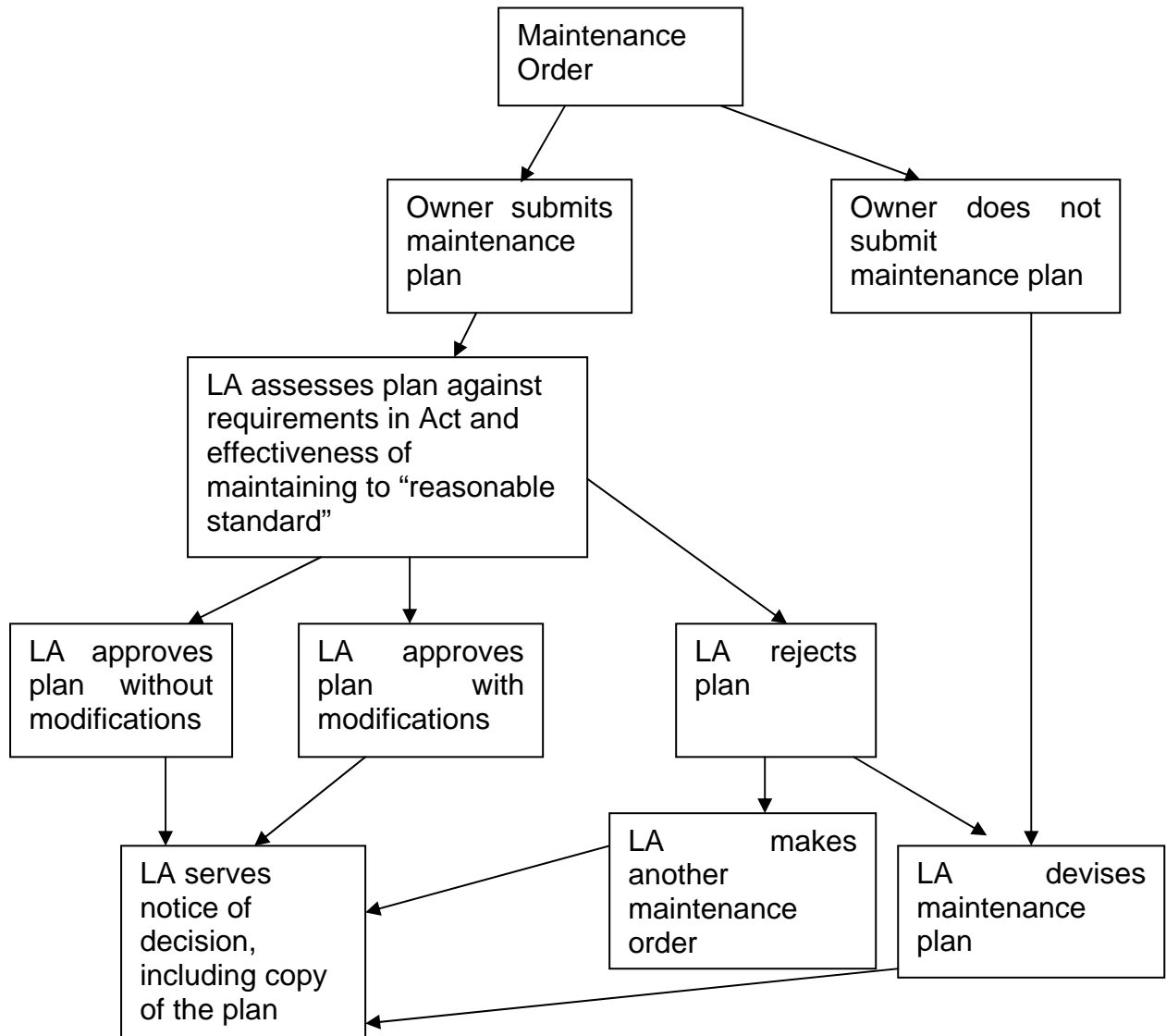
- 3.37. Whether or not the local authority decides to provide a template, it will be important that it gives owners clear and accessible information on what it will be expecting the maintenance plan to provide when it comes to assess it. This will enable owners to submit plans which the local authority is more likely to be able to approve.
- 3.38. So the local authority will need to have thought about how it will assess maintenance plans before it issues maintenance orders. Paragraphs 3.44-3.91 look in more detail at these considerations.
- 3.39. Annex B summarises these discussions around maintenance plans.

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3.40. The following flowchart summarises the key processes in putting a maintenance plan in place.



What happens once the owner submits the plan?

- 3.41. The local authority is responsible for assessing the plan. It will want to think about how to manage this process, for example how it will assess whether the plan is appropriate, and who will be involved in this assessment.
- 3.42. It would also be useful for local authorities to have a system which will highlight when an owner has not submitted a plan by the date which the maintenance order specifies.
- 3.43. There is no time limit in the Act for local authorities to assess plans which owners submit to them. But it would be advisable for local authorities to do this as quickly as possible. This will mean that the plan will be appropriate to

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the current state of the house, and that owners will take on their responsibility for implementing the plan as soon as possible.

Assessment

- 3.44. The local authority can approve a maintenance plan (with or without modifications) or reject it.
- 3.45. The local authority will want to consider how it will assess the maintenance plan before it issues a maintenance order, so that it can provide information to owners at that stage. The assessment procedures will also influence any standard form the local authority chooses to produce.
- 3.46. The following paragraphs look at:
- legislative requirements;
 - joint maintenance plans – apportionment of liability;
 - joint maintenance plans – management of implementation;
 - “reasonable standard”; and
 - other things the local authority might look for when assessing the plan.

Legislative requirements

- 3.47. The Act sets out minimum requirements for a maintenance plan. For the authority to approve a maintenance plan, the plan must set out:
- what maintenance is needed,
 - what steps are to be taken to achieve this;
 - when these steps are to happen; and
 - an estimate of the costs.
- 3.48. When assessing the maintenance and steps which the plan sets out, the local authority should take account of the fact that the plan should secure the maintenance of the property to a reasonable standard (see also 3.61-3.66).
- 3.49. The local authority will need to consider how it will assess whether the estimate of costs is realistic. For example, this might require owners to have some level of input from professionals or contractors. Or, the local authority could provide information to owners on likely costs. It could do this by providing a sample list of charges, or sign-posting owners to other agencies who could provide this, such as the Royal Institute of Chartered Surveyors (RICS).
- 3.50. The local authority should also note that it can only approve a joint maintenance plan if the majority of owners have agreed to it. So it will need to satisfy itself that this is the case.

Joint maintenance plans – apportionment of liability

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- 3.51. Joint maintenance plans must also deal with the apportionment of costs. The local authority cannot approve a joint plan if the apportionment of costs or responsibility goes against anything in the title deeds, development management scheme (DMS) or tenement management scheme (TMS).
- 3.52. The local authority will have to decide how it will deal with this requirement. It might be costly and time consuming for the local authority to research these elements for each joint maintenance plan it receives. So it might decide that it is sufficient to advise owners of this requirement, and to ask them to provide proof that they have checked that their plan does not breach these provisions.
- 3.53. Owners should contact their own lawyers for information on their title deeds. Citizens Advice Bureaux may be able to help owners to understand the deeds where they have a copy of them. Property managers (where applicable) might also be able to advise owners on the appropriate split of liability.
- 3.54. The authority might also wish to advise owners of the Communities Scotland publication *Common Repairs Common Sense* for more information on the TMS.
- 3.55. The local authority should seek its own legal advice on what level of evidence it should require before approving the plan.

Joint maintenance plans – management of implementation

- 3.56. The Act allows joint maintenance plans to require the appointment of a person to manage the implementation of the plan. But it does not say that this is mandatory for all joint maintenance plans.
- 3.57. The local authority will need to consider how it will assess this element of plans. There is no requirement in the Act for owners to appoint someone, but in practice the authority may decide to reject joint maintenance plans which do not. It should ensure that it tells owners at the point of drafting a maintenance plan if it will assess joint plans in this way.
- 3.58. The local authority will also want to think about (and advise owners of) how it will assess the suitability of any person or company which a plan appoints. It may be necessary to do this on a case by case basis. There is currently no accreditation scheme for property managers, although the Scottish Government is looking into the possibility of introducing a voluntary accreditation scheme.
- 3.59. The local authority may find it useful to sign post owners to *Common Repairs Common Sense* for more information on their rights to appoint

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property managers. Another useful source of information might be the Property Managers Association Scotland (PMAS).

- 3.60. If the local authority is willing to approve plans which appoint an individual to manage the implementation of the plan, it should make it clear what qualifications or experience it expects that person to have. The local authority might wish to consider offering training for owners who wish to take on this role.

Reasonable standard

- 3.61. The purpose of the maintenance plan is to secure the house to a “reasonable standard”. So local authorities will want to be satisfied that the plan will do this before it approves it.
- 3.62. As with the good practice around the maintenance order, it will be important for the local authority to clearly state to owners what it considers to be a “reasonable standard”. If it provides this information when it serves the maintenance order, owners are more likely to be able to prepare a plan which is appropriate.
- 3.63. It is likely that the local authority will want to consider “reasonable standard” in terms of the condition of other properties in the area. This might include looking at other initiatives where properties are being maintained. For example, local authorities or local housing associations might own properties in the area which are subject to cyclical maintenance programmes. It might be appropriate to consider similar measures for private owners who have received maintenance orders.
- 3.64. But just because this standard applies to housing association properties does not guarantee that it will be “reasonable” in the context of these powers.
- 3.65. Alternatively, the local authority might want to draw up a new framework in relation to maintenance plans. But again, it will want to check that this is “reasonable” if this means that it is requiring private owners to maintain their properties to a much higher or lower standard than other tenures.
- 3.66. The local authority should not consider the situation of the owner when it sets out a framework for what will be a reasonable standard. It should deal with this through its Scheme of Assistance (if applicable), or other support which it offers to owners.

Other things the local authority might look for when assessing the plan

- 3.67. The local authority may wish to consider what else it will be looking for in the maintenance plan. Again, it should take account of these if producing a

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template, and should ensure that owners are aware when it serves the maintenance order that it intends to assess these criteria.

- 3.68. For example it may wish to consider:
- (i) what parts of the house the maintenance plan includes;
 - (ii) how often the plan requires action;
 - (iii) whether there should be technical input to drafting the plan; and
 - (iv) the level of detail in the plan.
- 3.69. Owners can appeal against the authority's decision to approve or devise a maintenance plan (for more information see Annex D Appeals). So the authority will want to bear this in mind when setting out its policies for assessing maintenance plans, if its assessment goes beyond the minimum requirements of the Act.

(i) What parts of the house the maintenance plan includes

- 3.70. The local authority will need to make it clear to owners what it expects the plan to cover. For example, the plan could:
- cover only those elements which triggered the maintenance plan; or
 - cover all aspects of the house (possibly with priority given to the trigger areas in the short term).
- 3.71. The benefit of the first option is that the maintenance plan will focus on the elements of the property which owners have failed to maintain. Owners might be more likely to stick to a plan if they can see that each action will rectify something which they have not been maintaining. The plan would not place additional burdens on owners in relation to other elements of the property which they were already maintaining, or which were already in a reasonable standard.
- 3.72. On the other hand, the second option might be more appropriate in terms of ensuring that the house is maintained to a reasonable standard (which is the purpose of the maintenance plan). The local authority could produce a template for the plan containing a checklist of each element of the house which it expects owners to maintain.
- 3.73. In either case the local authority will want to consider whether its intervention is proportionate. For example, it might not be appropriate to issue a maintenance order requiring a plan for every element of the house if the only problem initially was that the garden was overgrown.

(ii) How often will the plan require action?

- 3.74. Whatever the scope of the plan, the local authority will want to consider how often it wants the plan to look at each element. Some elements might require an assessment or action more frequently than others.

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- 3.75. The plan should set out routine maintenance over the period it covers. But there may be advantages in building in flexibility to take account of other things, for example including additional assessments of the property after storms.
- 3.76. The local authority will also want to consider how it will monitor the implementation of the maintenance plan. For example, it may be more practical for it to monitor annual targets rather than quarterly ones (see also paragraphs 4.25-4.34 which look at monitoring of the plan).

(iii) Should there be technical input to the plan?

- 3.77. The local authority might decide that it will be easier to assess the suitability of plans if it requires that they are produced with input from technical professionals. If so, it will want to consider whether it will be looking for those professionals to have minimum qualifications, or similar. Again, it should inform owners at the point of the maintenance order if it is taking this approach.
- 3.78. But it should be aware that there is nothing in the Act which requires owners to use professionals to produce the plan. Owners could appeal against the authority's decision to reject a maintenance plan on this (or other) grounds.
- 3.79. The authority will also want to consider that owners will face upfront costs in producing the plan if they have to use technical professionals to do this. This might act as a disincentive to submitting plans. And the authority should think about whether there are any problems with requiring professional input to the drafting of maintenance plans if there is a known shortage of such professionals in the area.
- 3.80. To help with the assessment of plans submitted without technical input, the local authority may wish to provide a checklist of elements which the plan is to cover for owners to complete. It could adapt this depending on what approach it takes in terms of what is included in the plan (as paragraphs 3.70-3.73). For example, if the plan was to cover the whole house, this could highlight the elements which triggered the maintenance order for particular attention.
- 3.81. Where there are property managers or factors, it would be good practice for the local authority to encourage owners to involve them in the production of the plan. They are also likely to have an integral role in the implementation of the plan.

(iv) The level of detail in the plan

- 3.82. The authority should also make it clear how detailed it expects the plan to be. For example, it might decide to only approve plans which:

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- set out an assessment of each element of the house, with information on what in particular should be done, and when; or
 - include timescales on when each element should be looked at.
- 3.83. For example, the maintenance plan could include an entry for “roof”. The first option might be “maintain the roof in August each year by doing x, y and z”, based on a report from a surveyor which the owners had commissioned. The second option might be for it to say “commission a report in August each year to assess the state of the roof and any work needed to it; and carry out that work as necessary”.
- 3.84. The benefit of this second option is that it would be a way to offset the costs until after the plan was in place. It might also enable the plan to be more flexible in responding to the actual state of the property at the time of each assessment.
- 3.85. Ultimately the aim of the plan is to maintain the property to a reasonable standard. The local authority should consider how much flexibility it wishes to give owners in terms of how they set up their plan to achieve this.

Who will assess the plan?

- 3.86. This may vary between authorities, but it is likely that the same staff and/or department who issued the maintenance order will be assessing the maintenance plan. They may also be the people who will be monitoring the implementation of the plan, and any necessary enforcement (see Chapter 4 Carrying Out The Maintenance Plan).
- 3.87. The benefit of this approach is that staff will be familiar with the reasons why the local authority thought there was a problem with the house, and so may find it easier to assess the suitability of the plan. But it also means there may be heavy workloads for staff, which local authorities will wish to be aware of. Authorities should also consider whether they need to take any steps to avoid any concerns of there being a conflict of interest.
- 3.88. Local authorities might also involve colleagues with specific technical knowledge. This will depend on the information which the maintenance plan provides, but might be appropriate if, for example, there is a question over whether the maintenance which the plan sets out will maintain the house to a reasonable standard.

When the local authority does not approve the plan

- 3.89. The local authority might take the view that the maintenance plan does not meet the requirements under the Act.

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- 3.90. In this situation the authority can modify it and then approve it, or it can reject it. The local authority will want to ensure it has a clear framework for deciding how to deal with plans in this situation.
- 3.91. If it rejects the plan, the authority can substitute a plan of its own devising, or it can serve a new maintenance order. Again, it will be up to the local authority to determine what the most appropriate route is.

What happens if the owner does not submit the maintenance plan by the date set out in the maintenance order?

- 3.92. The local authority can devise a maintenance plan for the house once the date for submission has passed.

Devising the plan

- 3.93. Local authorities will need to decide how they will devise maintenance plans for houses where owners have not submitted plans, or where the plans they have submitted are unsatisfactory.
- 3.94. Authorities should ensure that the plan they produce would be approved if an owner had submitted it – that is to say, they should make sure it fulfils the legislative obligations set out in the Act (as paragraph 3.47), and will maintain the house to a reasonable standard.

Who will devise the plan?

- 3.95. Local authorities might wish to outsource the drafting of maintenance plans, for example if there are particular resource issues such as staff availability or expertise. They might decide that plans should be drawn up by professionals with skills which are not available in-house.
- 3.96. But if they do so, they will want to think about what they have asked owners to produce if they provided them with a template. For example, will the local authority be requesting professionals to draw up their plans, whereas individual owners can use a checklist?
- 3.97. They may wish to ensure that they have transparent reasons for producing a different type of plan if this is the case.
- 3.98. There will be costs in devising the maintenance plan. Chapter 4 (Carrying Out The Maintenance Plan) and Annex E (Recovery Of Expenses And Repayment Charges) look at the powers of local authorities to recover costs from owners. But these powers only extend to expenses the local authority incurs in implementing a maintenance plan.

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Will owners see the local authority devising the plan as the easy option?

- 3.99. It is the owner's responsibility to produce a maintenance plan.
- 3.100. The local authority is likely to minimise the number of plans it has to devise itself if it provides sufficient information and support to owners, and also if it decides to produce a template for the plan which is easy for owners to use.
- 3.101. The local authority might choose to offer a service of producing a maintenance plan on the owner's behalf. For example, it might offer this as part of its Scheme of Assistance. The emphasis of the new powers is that it is the owner's responsibility to maintain his or her property, so the local authority will want to consider any presentational implications of offering to take on this role for owners.
- 3.102. In all cases the local authority should give owners the opportunity to produce the plan themselves in the first instance.

What else does the local authority have to do to use maintenance plans?

Notice

- 3.103. The local authority must notify owners when it decides to approve, reject, vary or revoke a maintenance plan. So it should ensure that it has arrangements in place to serve notice to owners once it has made its decision.
- 3.104. The notice must include a copy of the maintenance plan, except where the authority has approved the plan without modifications. But it would be good practice to include a copy of the plan in any case.
- 3.105. This means that the local authority cannot serve notice on the owner until it has modified or devised the plan. But the local authority should still ensure that it notifies the owner of its decision as soon as possible.

Registration

- 3.106. The local authority must register any maintenance plan which it approves or devises.
- 3.107. The good practice for registering maintenance orders, as set out in paragraphs 2.58-2.64, will also apply to maintenance plans. In particular, local authorities should look at the good practice around:
- waiting for the end of the period for appeal (or for any appeal to be finally determined) before registering; and
 - existing arrangements for registering.

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- 3.108. Again, it will be important for the maintenance plan to correctly identify the property. The local authority or owner should be able to copy this across from the maintenance order.

Appeals

- 3.109. Owners can appeal against the decision to approve or reject a maintenance plan, or to vary or modify it. For example, this might happen if the local authority has approved a joint maintenance plan, but one of the owners does not agree to it.
- 3.110. Since decisions will be open to challenge, it is important that the process for assessing maintenance plans is clear and transparent.
- 3.111. Annex D provides more information on the appeals process.

Chapter 4 Carrying Out The Maintenance Plan

Legislation

s48 (1) Who is responsible for carrying out the maintenance plan?

- 4.1. Owners are responsible for securing the implementation of the maintenance plan. This might mean doing the work themselves, or arranging contractors to carry out the work, depending on the requirements of the plan.
- 4.2. This includes plans which the local authority has devised (either because the owner has not submitted one, or the one which he or she submitted was not appropriate).

What support should the local authority give to implement the plan?

s48 (2) 4.3. The local authority may do anything it considers appropriate to enable or assist the owner of the house to implement the maintenance plan.

s48 (2)(a) 4.4. But if it is using powers under this section it can make payments into a maintenance account only if this is under the new provision to pay in missing shares where an owner is unable to pay (see Chapter 5 Maintenance Accounts).

s48 (2) 4.5. And it can give money to individual owners under this section only if this is a grant in relation to the administration of the maintenance account (see paragraph 5.9).

s71 4.6. Local authorities might wish to use this section to provide practical support to help owners to implement their maintenance plans. They should also be aware that they can provide direct assistance to owners under their Scheme of Assistance for maintenance works, and through s50 and s51.

When can the local authority enforce the maintenance plan?

s49 4.7. The local authority can enforce a maintenance plan if the owner has failed to secure the carrying out of any maintenance which the plan sets out. It can also enforce the plan if the owner has not done anything else which the plan requires.

4.8. In these situations, the local authority can do anything which it considers necessary or appropriate to secure the implementation of the plan.

4.9. This can include varying the plan before it takes any further action. But under this section this does not include paying money into a maintenance account or directly to an owner, other than under the circumstances set out in paragraphs 4.4 and 4.5.

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s71

4.10. Local authorities may wish to use this section to provide practical support and enforcement. But if they wish to provide direct assistance, they should be aware that they can do so under their Scheme of Assistance or their powers under s50 and s51 (see Chapter 5 Maintenance Accounts).

s181
-184

4.11. Local authorities have rights of entry to premises (including adjacent land and premises) at any reasonable time for deciding whether owners have implemented a maintenance plan. 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 from the local authority.

4.12. There is no right of appeal against the decision to enforce a maintenance plan.

Recovery of expenses

s59

4.13. The local authority may recover from the owner any expenses it incurs in enforcing a maintenance plan. This can include any administrative expenses incurred, and interest at a reasonable rate from the day on which it first serves the request for payment.

Part 7

4.14. The local authority can also issue a repayment charge against the property to reclaim these costs. There is more information in Annex E Recovery Of Expenses And Repayment Charges.

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Policy and Good Practice

Who is responsible for carrying out the maintenance plan?

- 4.15. The local authority will want to ensure that owners know they are responsible for implementing the plan. And it should also highlight that the local authority can enforce the plan, and will recover costs, if owners do not do this.
- 4.16. It might be useful if the local authority includes information on the whole process from the point at which it serves the maintenance order.

What support should the local authority give?

- 4.17. Local authorities will want to think about what support they can give to owners to help them to implement their maintenance plans. By providing appropriate support from the beginning they may be able to reduce the number of maintenance plans which fall to them to enforce.
- 4.18. The support which owners need is likely to vary depending on the individual requirements of the plans, and the experience and circumstances of the owners. For example, owners of individual houses might require more support than those in tenemental properties where a property manager may be overseeing the implementation (although this is not to say that they will not also require support). Some groups of people may also require more support, such as older people or other equality groups.
- 4.19. Local authorities can use their Scheme of Assistance to support owners who have a maintenance plan. So the local authority will want to be thinking about what in particular might be useful for these owners when designing their SoA.

Monitoring the implementation of the plan

- 4.20. The local authority can enforce a maintenance plan if the owner fails to secure its implementation. The authority can also step in if the owner does not do anything else which the plan requires.
- 4.21. So the local authority will need to have systems in place to identify when this happens. It will need to monitor the plan throughout the whole period which it covers, potentially up to five years.
- 4.22. The design of the maintenance plan will have an impact on how the local authority can monitor it. A plan with clearly defined targets and timescales will be easier to assess than one which has fewer discrete milestones. The local authority will want to bear this in mind if it designs a standard form (see also Chapter 3 Maintenance Plan).

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- 4.23. The local authority may already have systems in place to monitor the condition of houses over a period of time. For example, there may be arrangements to monitor houses which the local authority has previously supported through grants. Or environmental health colleagues might have a system for tracking properties they have dealt with in the past.
- 4.24. It will be up to each local authority to develop a programme for monitoring maintenance plans which is appropriate to its circumstances. It will want to consider factors such as existing arrangements for monitoring, the design of the maintenance plan, and the available resources (for example in terms of staff commitment). Paragraphs 4.25-4.30 set out one possible approach.

How will the authority monitor the plan?

- 4.25. The local authority could require owners to submit a return to show their progress against the maintenance plan to date. The local authority could provide a pro-forma for return to make it easier for owners to respond, and for the authority to assess their progress.
- 4.26. Property managers (where applicable) could take a role in coordinating this response. But the owners should be aware that ultimately the responsibility to implement the plan lies with them.
- 4.27. If the return identified a problem, or if owners did not make a return, the local authority could then carry out a follow up on-site survey, to compare the current state of the house with the schedule of maintenance set out in the plan. The authority would need to decide who would be responsible for these surveys, for example private sector policy officers or qualified surveyors. Again, this might depend on the level of detail which the maintenance plan contains.
- 4.28. The benefit of this approach is that owners would primarily be responsible for satisfying the local authority that they are implementing their plan. The authority would only need to become more involved on a practical basis if there was a problem with this return.
- 4.29. The local authority could also decide to combine these elements, for example by asking owners to make returns as well as carrying out surveys on a random basis as a form of quality control.
- 4.30. The amount of available resources is likely to determine how pro-active the local authority will be in terms of monitoring houses.

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How often will the authority monitor the plan?

- 4.31. The local authority should also consider how frequently it intends to monitor the progress of maintenance plans. It will need to check plans frequently enough to identify problems in good time. But it will also want to ensure that this is not so frequent that owners are unlikely to make the returns or the local authority is unable to cope with the volume of responses.
- 4.32. It should make sure that the returns are appropriate in terms of what the maintenance plan sets out. If the plan identifies maintenance which the house needs on a yearly basis, then it would make sense for the local authority to require a yearly return from the owner shortly after each of these deadlines. If, however, the work is done on a 2 yearly cycle, a yearly return might not always be useful in identifying whether or not the owner was implementing it.
- 4.33. The local authority will want to think about when it asks owners to make their returns. It might decide to focus all the returns to one point of the year, for example tying it in to the end of the financial year. Or it could decide to stagger returns across the year, by asking owners to submit returns by the end of a particular month, depending on when the local authority first approved the plan. Important factors here might be how many maintenance plans the local authority will be monitoring, and what pressures staff might have at various points in the year.
- 4.34. It might also be useful for the local authority to consider whether it will have any form of ad hoc returns, in addition to the formalised cycle. This might be something it would want to think about after a period of particularly heavy weather, for example, to find out whether owners were implementing any part of the maintenance plan in relation to identifying and dealing with storm damage.

Enforcement of the maintenance plan

- 4.35. The local authority should only take action to enforce a plan where the owner has failed to secure its implementation, or to do anything else which the plan requires him or her to do.
- 4.36. Local authorities are not obliged to take action in these circumstances. But they will want to consider the consequences of not doing so. The house in question may potentially fall into disrepair if it is not maintained. And other owners might realise that the local authority is not taking enforcement action.
- 4.37. If, on the other hand, the local authority takes action to enforce any plan as soon as an owner fails to implement it, this might act as an incentive for other owners to take responsibility for implementing their plan.

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When should the local authority enforce the plan?

- 4.38. Local authorities will need to think about how they will determine when they need to take enforcement action. Again, the design of the maintenance plan is likely to help with this. If the plan sets out clearly defined and measurable targets, it will be easier for the local authority to assess when an owner has failed to carry these out.
- 4.39. The local authority should also think about what steps it will take before enforcing the plan. Contacting the owners in the first instance might be enough to get them to take responsibility for implementing the plan.
- 4.40. For example, the authority should advise owners that it has identified a problem with the implementation of the plan, and what will happen if the owners do not rectify this (in terms of enforcement). Owners may not be aware of the problem. Or they may have a valid reason for not having taken certain action which the maintenance plan sets out.
- 4.41. The local authority must give notice to owners if it intends to exercise its rights of access (as paragraph 4.11) to establish whether or not owners are implementing their maintenance plans. The authority should ensure that it identifies any equality issues in advance of giving such notice. In particular it should consider the legal requirements embodied in the separate Disability, Gender and Race Equality Duties.

What action will the local authority take?

- 4.42. If the local authority is satisfied that it needs to step in to enforce the maintenance plan, it will need to determine how much action it will take.
- 4.43. The local authority can do anything which it considers necessary or appropriate to secure the implementation of the plan. If it wants to provide assistance to owners, it should be aware that it can pay money into a maintenance account only to cover a missing share, in certain circumstances. And under its maintenance plan powers it can only give grant to owners if this is to cover certain administrative costs around the maintenance account (see Chapter 5 Maintenance Accounts for more information). Paragraphs 4.3-4.10 also consider this issue, including the separate issue of assistance under the Scheme of Assistance.
- 4.44. So local authorities will have quite a lot of flexibility in terms of how much, or how little, they intervene to secure the implementation of the plan.
- 4.45. The local authority should make an assessment of the action it needs to take on the basis of each individual maintenance plan. It is ultimately the owner's responsibility to implement the maintenance plan, so it would be good practice for the local authority to look to do as little as possible to get the plan back on track for owners to take forward. For example, if the plan

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sets out the required maintenance on an annual basis, the local authority might want to carry out those elements for the current year, and hand the implementation back to owners to take forward in subsequent years.

- 4.46. There may be situations where the local authority thinks that it is appropriate to take on the management of the plan for the rest of the period which it covers. But this is likely to be only after the local authority has taken enforcement action on a number of occasions, where owners are continually failing to secure the implementation of the plan.
- 4.47. And if the local authority takes on physical aspects of the maintenance plan, such as carrying out maintenance or arranging for assessments, it will need to decide whether this should be done in-house or through external contractors. It will want to consider how to apply existing procurement or tendering practices it uses to ensure that this is value for money, since it will be reclaiming the costs from the owner (see Annex E for more information on repayment charges).
- 4.48. Alternatively, it may be that the local authority only needs to offer support in terms of providing advice to owners on how to arrange to do the work. For example, it might decide to hold meetings for owners in a block where a maintenance plan is slipping, to provide advice to owners on how to engage contractors.
- 4.49. The resources available to the local authority will also have an impact on how much enforcement action it takes. It can recover expenses from owners, but it will need to cover the costs in the first place.

Recovery of expenses and repayment charges

- 4.50. It will be up to the local authority to decide when to register a repayment charge. But if it does this as soon as possible after it has enforced a notice, this may act as an incentive to owners to take responsibility for implementing the rest of their plans themselves, rather than relying on the local authority to do it.
- 4.51. There will be a cost for registering a repayment charge.
- 4.52. More information on repayment charges is available in Annex E.

What happens on completion of the maintenance plan?

- 4.53. There is no provision in the Act to extend maintenance plans beyond the five year period.
- 4.54. But there is nothing to stop the local authority from serving another maintenance order, if it thinks this is appropriate in terms of meeting the requirements under the Act for issuing a maintenance order.

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- 4.55. For example, the local authority may have had to step in continually to enforce the maintenance plan on a particular house. It might take the view that the owner of the house is therefore unlikely to continue to maintain it once the maintenance plan has come to an end.
- 4.56. In this situation, the local authority may want to serve another maintenance order under the provision that the house is “unlikely to be maintained to a reasonable standard”. But the authority will want to ensure that it has sufficient evidence to support this decision, as the owner will have a right of appeal against the maintenance order.
- 4.57. It is likely that the majority of owners will be taking responsibility for maintaining their properties by the end of the period of the maintenance plan. The local authority may want to encourage owners to continue with a maintenance plan on a voluntary basis, for example by agreeing a plan with the factor (if there is one). The local authority can continue to provide support, for example by providing a standard form, or through their powers around maintenance accounts.
- 4.58. The local authority might also want to consider if and how it will continue to monitor properties once a maintenance plan has ended. For example, it might want to include a walk-by assessment on a yearly basis so that it can identify if a problem with poor maintenance recurs.
- 4.59. As part of the longer term strategy on maintenance plans, the authority might also want to consider how it will assess the impact of serving a maintenance order. It might be useful for business planning purposes to be able to show whether the use of maintenance orders has taken properties from a state of poor maintenance to a culture where owners are increasingly taking responsibility.

Chapter 5 Maintenance Accounts

Legislation

What is a “maintenance account”?

s194
(1)

5.1. The Act defines a maintenance account as:

“a bank or building society account opened for the purpose of holding money to be used to pay costs incurred in connection with any work carried out for the purpose of maintaining premises consisting of two or more premises”.

What new powers do local authorities have?

5.2. Under the 2006 Act, local authorities have new powers to pay missing shares in to maintenance accounts. They can also pay grants to cover certain administration costs of maintenance accounts.

5.3. Local authorities can use these powers in relation to any maintenance accounts which owners have set up. The powers are not restricted to maintenance accounts set up to support maintenance plans following maintenance orders.

s50

Missing share (paragraphs 5.4-5.8 are statutory guidance)

5.4. Local authorities can pay in a missing share only where:

- a majority of owners have agreed to carry out the maintenance (for which they are responsible by virtue of a real burden or otherwise); and
- all owners have received notice that they should pay their share of the funds in to a maintenance account; and
- an owner has not complied with this; and
- any of the other owners have applied to the local authority to pay in the missing share.

5.5. The notice to owners must set out:

- the maintenance which is needed;
- when this is to be started and finished;
- when the maintenance was required and/or agreed (including the names of those who agreed it);
- an estimate of the costs of the work, and why they consider this to be reasonable;
- what the share of the costs is for each owner, with an explanation of how they reached this amount;
- information on the maintenance account, including where it is held and the number of it; and

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- the last date for owners to pay their share into the maintenance account.
- 5.6. Before paying in a missing share, the local authority must satisfy itself that:
- the maintenance is reasonable; and
 - the apportionment of costs to that person is correct in terms of real burdens, or any development management scheme or tenement management scheme which applies.
- 5.7. And, it can only pay in the missing share where:
- the owner is unable to pay in the funds; or
 - it is unreasonable to ask them to do so; or
 - the owner cannot be identified or found, by reasonable inquiry.
- 5.8. The local authority should pay the missing share directly in to the maintenance account.

s51

Grants for the administration of maintenance accounts (advisory guidance)

- 5.9. Local authorities can also pay grants to owners. But these can only be to cover any expenses the owner faces when they open, wind up or close a maintenance account.

s59 &
Part 7

Recovery of costs

- 5.10. The local authority can recover the payments it makes in relation to missing shares. This can include any associated administrative expenses, and interest at a reasonable rate from the date when the authority first serves the request for payment.
- 5.11. It must serve notice on the owner whose share it paid if it wants to recover the expenses in instalments.
- 5.12. The local authority can also issue a repayment charge against the property to recover these expenses. See Annex E Recovery Of Expenses And Repayment Charges for more information.
- 5.13. But the local authority cannot recover the cost of grants given for the administration of maintenance accounts.

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Policy and Good Practice

What is a maintenance account?

- 5.14. The 2006 Act does not introduce the concept of a “maintenance account”. The Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Act 2004 already use this term, and define it in a similar way to the 2006 Act.
- 5.15. The local authority can use its new powers in relation to any maintenance account. It is not restricted to helping only where owners have set up a maintenance account as part of the implementation of a maintenance plan under the 2006 Act.
- 5.16. The existing use of maintenance accounts is likely to vary between local authorities. And few banks or building societies will have a particular product which they brand as a “maintenance account”. But they may offer similar products, such as a treasurer’s account.
- 5.17. If owners approach the local authority for help with a missing share or with administrative costs, the local authority will want to ask them to show that they have set up the account in question to hold funds for maintenance to common areas.
- 5.18. Local authorities might want to start thinking about how to encourage the use of maintenance accounts, both as part of maintenance plans and also more broadly for premises which contain 2 or more houses.
- 5.19. The local authority cannot provide financial advice. But it might find it useful to produce information on the benefits of setting up an account, and on what owners should be looking for (see also Volume 5 Scheme of Assistance). The title deeds of the houses may already make arrangements for maintenance payments or for factoring. But if not, the local authority might advise owners to think about issues such as:
 - whether owners will be expected to pay in their shares on the same date;
 - how payments will be identified from each owner;
 - arrangements for withdrawals; and
 - what happens when an owner moves away.
- 5.20. It might also be useful for the local authority to contact local banks to advise them of the particular features of a maintenance account. The banks might then be able to provide a suitable product more quickly if owners approach them to set up an account.

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Missing share (paragraphs 5.21-5.40 are statutory guidance)

- 5.21. There are restrictions on when the local authority can pay in a missing share, in terms of notification, the maintenance required, the allocation of costs, and the situation of the owner. The following sub-sections (paragraphs 5.25-5.38) provide more information on these.
- 5.22. Even if these situations are met, there is no obligation for the local authority to pay in the missing share.
- 5.23. But the local authority will want to think about the potential impact of paying in the share. For example, the owners may have set up the maintenance account to support the implementation of a maintenance plan. If the local authority decides to pay in the missing share, this could avoid the situation of the local authority having to intervene to enforce the maintenance plan, if it is only the lack of one owner's share which is holding up the work.
- 5.24. Owners have the option of covering the cost of a missing share themselves, and pursuing the non-paying owner through the courts to recover these costs. Local authorities may want to make owners aware of this route in the first instance.

Notification

- 5.25. Paragraphs 5.4-5.8 set out the situations where the local authority can pay in a missing share.
- 5.26. All owners must have received notice of the maintenance, its timescales, costs and so on. The local authority will need to ensure that owners are aware that they have to do this before they can approach the authority for a missing share, for example by encouraging one owner to coordinate a notice to all the others. Owners should also be able to prove that they have served this notice when they approach the local authority.
- 5.27. It would be good practice for any group of owners who are setting up maintenance accounts to follow this procedure. So the local authority might want to highlight this in any information it provides about maintenance accounts.

Is the maintenance reasonable?

- 5.28. The local authority has to be satisfied that the maintenance is reasonable before it can pay in a missing share.
- 5.29. If the owners set up the account to implement a maintenance plan, it is likely that the local authority will already have assessed the maintenance as part of its approval of the plan. But if the work in question is additional to what

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the maintenance plan set out, the local authority will need to assess this separately.

- 5.30. Similarly, if the local authority has not served a maintenance order on the house, it will need to think about how it will assess the maintenance to ensure that it is reasonable. It might want to use the same process as for assessing maintenance plans.

Allocation of costs

- 5.31. The local authority can only pay in a missing share if the allocation of costs is correct in terms of liability under real burdens, TMS or DMS.
- 5.32. As with the assessment of maintenance plans, the local authority will need to think about how it will satisfy itself in relation to this.

Situation of the owner

When is an owner “unable” to pay?

- 5.33. The Act does not specify when a person is unable to pay. It will be up to the local authority to decide whether or not this is the case.
- 5.34. It will want to think about what framework to apply when owners have requested the local authority to pay a missing share. It might want to develop a framework which other areas of the authority already use, such as using a means test in cases of debt recovery.
- 5.35. In all cases the authority will want to ensure that its decision is fair and transparent.

When is it “unreasonable” for an owner to pay?

- 5.36. Again, this will be up to the local authority to determine. It is likely that local authorities will make this assessment on a case by case basis, but they should ensure that they have a clear framework for making these decisions.
- 5.37. The local authority should ensure that any information to owners on its power to pay missing shares makes it clear that it can only do this where the owner is unable to pay or it is unreasonable to expect them to pay. It would be helpful if any information also sets out how the local authority will make those decisions.

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Owner cannot be found

- 5.38. It might be that the local authority is able to identify absent owners through, for example, landlord registration. In this situation, local authorities may wish to advise owners of their rights to pursue the absent owners through the courts in the first instance.

Recovery of expenses

- 5.39. The local authority can recover the costs it incurs in paying in a missing share. This can include the share itself, any administrative expenses in relation to making that payment, and interest at a reasonable rate from when it first serves the request for payment.
- 5.40. It would be good practice to serve notice on owners if it intends to recover costs. And it must give notice of any decision to recover these costs in instalments.
- 5.41. Annex E provides further information on the recovery of costs and repayment charges.

Grants for the administration of maintenance accounts (advisory guidance)

- 5.42. The local authority might want to advise owners that it can provide assistance in these circumstances. The cost of each grant is likely to be fairly small, so the local authority might take the view that it is in its interest to provide this support if it enables owners to set up an account to get maintenance done.

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Annex A Considerations For Designing A Maintenance Order

A.1. Chapter 2 looks at when a local authority can serve a maintenance order. The following tables summarise some the legislative requirements and policy issues local authorities may wish to consider.

A.2. Requirements for content:

Registration requirements – needed to enable registration	<p>Identification of property:</p> <ul style="list-style-type: none"> • title if in land register (including identification as a separate unit if the property forms part of a registered title, for example a flat in a tenement); • conveyancing description if in Register of Sasines.
Legislative Requirements (s42)	<ul style="list-style-type: none"> • Requires owner to prepare, and submit, a maintenance plan. • Plan is to secure the house to a “reasonable standard”. • Specifies the period the maintenance plan is to cover (up to five years). • Specifies the date by which the owner must submit the plan.
Two or more properties	<ul style="list-style-type: none"> • The maintenance order can require owners to produce a joint maintenance plan.

A.3. Things the local authority should think about:

Period for plan	<p>The local authority will need to think about how long it wants the maintenance plan to cover (up to five years):</p> <ul style="list-style-type: none"> • the local authority will need to monitor, and possibly implement, it throughout this period. • will a maintenance plan of fewer than five years secure the maintenance of the property? • will the authority take the same approach for all properties, or potentially vary it by individual circumstances?
Deadline for submitting plan	<p>How long will the local authority give owners to submit the plan? The following might have an effect on this:</p> <ul style="list-style-type: none"> • whether the authority provides a template for the plan; • the level of detail the plan should provide; • complexity of problem plan is to deal with; • input from professionals; • Scheme of Assistance support.

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A.4. Additional information to consider giving to owners when local authority serves maintenance order:

Maintenance plan	<p>It would be helpful to give owners:</p> <ul style="list-style-type: none"> • advice on producing a maintenance plan – including template (if produced); • information on how the authority will assess the plan, as this will tell owners what they should look to include in it.
“reasonable standard”	<p>It would be good practice for the local authority to provide information on how it will assess this in particular, as it is a trigger for the maintenance order and a criterion for the maintenance plan.</p>
Appeals	<p>The local authority might wish to include information:</p> <ul style="list-style-type: none"> • on owner’s right to appeal within 21 days; • on how the local authority will process appeals.
Whole process	<p>It would be useful to provide information from the start about the whole process – for example</p> <ul style="list-style-type: none"> • what happens once the authority serves the maintenance order; • the implications if the owner does not submit a plan; • the local authority’s powers if the owner does not implement their plan once it is in place.
Scheme of Assistance	<p>The authority might want to include information on:</p> <ul style="list-style-type: none"> • what support is available from the local authority; • any other sources of information or support.

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Annex B Considerations For Designing A Maintenance Plan

B.1. Chapter 3 looks at maintenance plans. The following tables summarise some the legislative requirements and policy issues local authorities may wish to consider when using maintenance plans.

B.2. Requirements for content:

Registration requirements – needed to enable registration	<p>Identification of property:</p> <ul style="list-style-type: none"> • title if in land register (including identification as a separate unit if the property forms part of a registered title, for example a flat in a tenement); • conveyancing description if in Register of Sasines.
Legislative requirements - mandatory (s43)	<p>The Act requires the maintenance plan to include:</p> <ul style="list-style-type: none"> • specification of maintenance required throughout the period of the plan; • any steps to carry out that maintenance – including where anything needs to be repaired or replaced; • when such steps are to be taken; and • estimate of likely costs. <p>For joint plans:</p> <ul style="list-style-type: none"> • apportionment of liability amongst owners (in line with title deeds, TMS or DMS).
Legislative requirements – optional (s44)	<p>For joint plans:</p> <ul style="list-style-type: none"> • can apportion responsibility for maintaining amongst owners (in line with title deeds, TMS or DMS); • can require owners to appoint person to manage implementation of plan; • can require owners to open a maintenance account and deposit sums in it; • can set out arrangements for operating a maintenance account.

B.3. Things the local authority should think about:

Purpose	<p>The purpose is to maintain house to a reasonable standard:</p> <ul style="list-style-type: none"> • how will the local authority define this?
Assessment of plan	<p>How will the local authority assess the plan? Points to consider (and to make owners aware of) include:</p> <ul style="list-style-type: none"> • how will the authority know if it will achieve the aim of maintaining to a reasonable standard? • what will the plan cover?

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Assessment of plan (cont)	<ul style="list-style-type: none"> • will the plan have discrete elements to assess? • how often will there be things to do? • will it require technical input to the drafting of the plan? • will it only accept joint maintenance plans which appoint a person to manage its implementation? And whether/how to assess that person/company's suitability?
Monitoring of plan	<ul style="list-style-type: none"> • Does it lend itself to being monitored? • For example, are there clear, measurable milestones so can identify when fall off track? • Will the plan include a pro-forma for returns to the local authority?

B.4. Additional information to consider giving to owners when local authority serves notice in relation to a maintenance plan:

Assessment	It will be good practice to tell owners what the authority will be looking for when it assesses the plan.
Owner's right to appeal	<p>The local authority might wish to include information:</p> <ul style="list-style-type: none"> • on owner's right to appeal within 21 days; • on when the owner can appeal (for example, if the authority varies a plan); • on how the local authority will process appeals.
Scheme of Assistance	<p>The authority might want to include information on:</p> <ul style="list-style-type: none"> • what support is available from the local authority; • any other sources of information or support.
Process	<p>It would be useful to provide information from the start about the whole process – for example:</p> <ul style="list-style-type: none"> • what happens if the owner does not submit a plan by the set date, or if that plan is unsuitable; • how the local authority will monitor the implementation of the plan; • the local authority's powers if the owner does not implement the plan once it is in place (including the recovery of costs).

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Annex C Service Of Documents

- C.1. The 2006 Act gives local authorities new powers to deal with houses which owners are not maintaining. 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.
- C.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.
- C.3. This annex looks only at the procedural requirements of serving notices. Chapters 2, 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

- C.4. The following table sets out the requirements for maintenance orders and maintenance plans:

Reference	Documents	Who should receive the notice
(s42) s62	Maintenance order	<ul style="list-style-type: none">the owner and occupier of the house concerned;
s46(4), s62	Notice of local authority's decision to approve, reject or devise a maintenance plan	<ul style="list-style-type: none">any creditor holding a standard security over that house;any person who receives rent in respect of that house, whether directly or indirectly; and
s47(4), s62	Notice of variation or revocation of maintenance plan	<ul style="list-style-type: none">any other person whom the local authority considers to have an interest in that house.

s62
(3)

- C.5. 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.
- C.6. 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.
- C.7. The powers to identify owners are set out in s186 of the Act.

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Recovery of expenses

- s59 (5)
- C.8. There is no statutory requirement to serve notice if the local authority wishes to recover expenses (see Annex E), 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.
- C.9. But it would be good practice for local authorities to serve notice in all cases where they intend to recover expenses.
- C.10. 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)
- C.11. Local authorities must serve notice in writing. This applies to any of the notices, orders or notifications which the table above sets out.
- s187 (6)
- C.12. 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)
- C.13. For documents relating to Chapters 6, the document is served on the day on which it is served on the **owner** of the house.
- s187(3), (4), (5)
- C.14. 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)
- C.15. If the notice is being issued by post it should be sent in a prepaid registered letter or by recorded delivery.
- s187 (3)
- C.16. 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)
- C.17. 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 (ie excludes 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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C.18. It would be good practice for the local authority to keep a record of such electronic correspondence.

s187
(9),
(10)

C.19. 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)

C.20. A document takes effect from the date on which it is served.

s63 (2)

C.21. The only exceptions to this in terms of Chapter 6 of the Act are where the recipients of notices appeal against the decision set out in the notice:

- to make a maintenance order; or
- to approve, devise, vary or revoke a maintenance plan.

C.22. Annex D contains more information on rights of appeal, and the effect of appealing a notice.

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Annex D Appeals

- D.1. Local authorities can require owners to prepare and implement a maintenance plan for up to a five year period. The Act gives owners certain rights of appeal against various stages in this process.
- D.2. 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.
- D.3. 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 it serves notice of the decisions against which they can appeal.

Rights of appeal

D.4. There are rights of appeal against a number of decisions which the local authority can make when using its powers under Chapter 6 of the Act.

D.5. Those decisions are:

- to serve a maintenance order;
- to approve or devise a maintenance plan; or
- to vary or revoke a maintenance plan.

D.6. The local authority must serve notice of each of these decisions (see also Chapters 2 and 3 for more information on maintenance orders and plans). Annex C provides further information on the requirements for serving documents.

D.7. Only the person who the local authority served the notice on has the right to appeal.

D.8. 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 C for more information on when a document is served).

D.9. But the sheriff can decide to hear the appeal after the 21 day period, if the authority or person can show cause for this.

D.10. A person cannot approach the Ombudsman to investigate any of the decisions which D.5 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

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of law. This would be the case where an owner has the right to appeal under the 2006 Act.

Outcomes of appeal and role of the sheriff

s65
(1)

- D.11. 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
(5)

- D.12. There is no right to appeal the sheriff's decision in relation to maintenance powers. In these cases the sheriff's decision is final.

s66
(4)

- D.13. The sheriff has discretion as to what level of expense to award to whom.

Effect of lodging an appeal

s63
(2),
(3)(a)

- D.14. If a person appeals the decision to serve a maintenance order and maintenance plan, the notice will not take effect until the person or authority abandons the appeal, or it is finally determined.

s63
(8) (a)

- D.15. For appeals against decisions in relation to maintenance powers, the appeal is finally determined when the sheriff determines the appeal.

s63(9)
s64(7)

- D.16. 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.

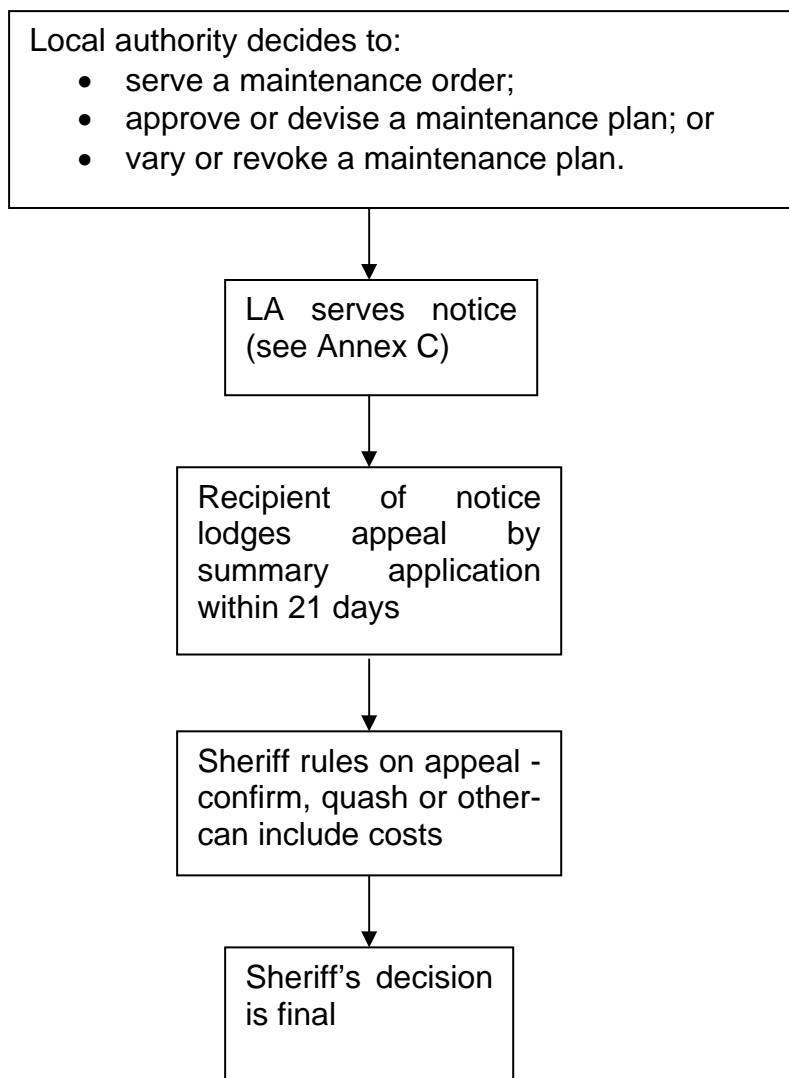
s63
(3) (b)

- D.17. 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)

- D.18. 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.

Summary of appeal process – maintenance powers



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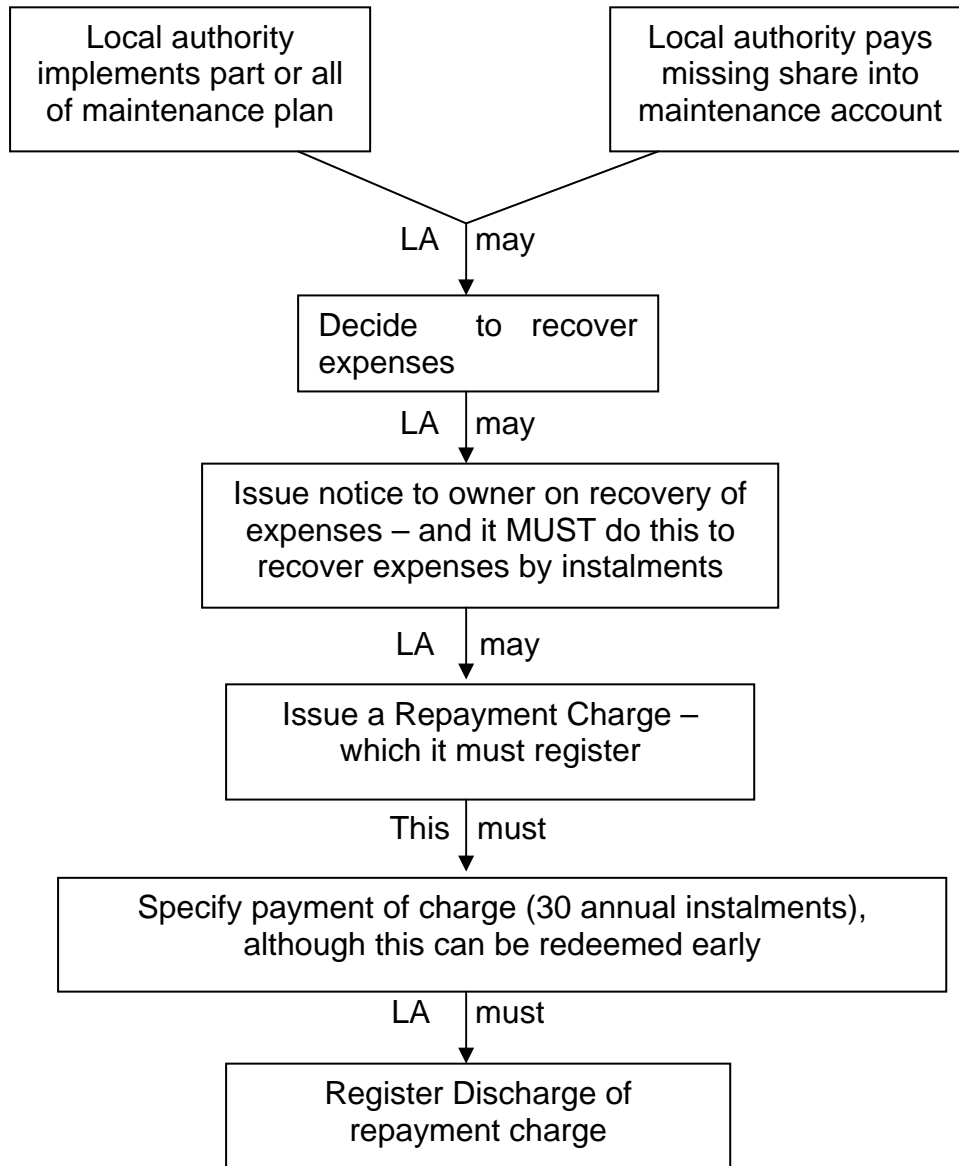
Annex E Recovery Of Expenses And Repayment Charges

Introduction

- E.1. Local authorities can step in when owners are failing to implement any part of a maintenance plan which the authority has registered following a maintenance order. And they can pay in missing shares to maintenance accounts where an owner is unable to pay, or it is unreasonable to expect them to pay.
- E.2. The Act gives local authorities powers to recover costs from the owner in these situations.
- E.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.
- E.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.
- E.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.

Summary of new powers

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



Notice to owner on recovery of expenses

E.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).

s59

E.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 C provides further information on the requirements for serving documents.

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

s59
(1), (3)

E.10. These expenses can include:-

- expenses which the local authority has incurred in enforcing a maintenance plan;
- 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 (4)

E.11. The local authority can declare that owners are to repay these expenses in instalments.

E.12. It can decide the number and time period for these instalments.

s59
(1), (3)

E.13. The local authority will need to consider what costs it includes in the “administrative expenses”. But these expenses must be connected with implementing a maintenance plan, or in paying a missing share into a maintenance account.

E.14. 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

E.15. 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 taken action against non-residential premises. The local authority should pursue businesses through the courts in the usual way to recover these costs.

E.16. 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)

E.17. Scottish Ministers have specified the form for a repayment charge¹. Local authorities must use this form when issuing a repayment charge.

¹ Available at http://www.opsi.gov.uk/legislation/scotland/ssi2007/ssi_20070419_en.pdf

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s172
(1), (3)

- E.18. 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)

- E.19. The repayable amount is the lowest of:
- the expenses which the local authority has incurred in implementing a maintenance plan or paying a missing share into a maintenance account (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.

E.20. At the point of publication of this guidance, Scottish Ministers have not prescribed such an amount. Local authorities will be advised if this happens.

E.21. 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.

E.22. 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)

E.23. The local authority must register the repayment charge in the appropriate land register.

E.24. The authority should already have processes in place for identifying properties and registering notices in the register.

E.25. There will be a cost for registering repayment charges. As at autumn 2007, this was £30 per registration.

s173
(1), (2)

E.26. 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.

E.27. 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)

E.28. 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 third party.

Payment of charge

s172
(3)

E.29. The repayment charge will specify that it is recoverable in 30 equal annual instalments, payable on the same date each year.

s172
(5)

E.30. 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)

E.31. 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)

E.32. 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.

E.33. Scottish Ministers have specified the form in which the discharge of a repayment charge should be². Local authorities must use this form.

² Available at http://www.opsi.gov.uk/legislation/scotland/ssi2007/ssi_20070419_en.pdf

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E.34. Again, there will be a charge for registering this (see paragraph E.25).

s173
(5)

E.35. 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 maintenance plans;
- missing shares paid in to maintenance account.

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 the 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.

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ਆਲਾਚਨਾਮੂਲਕ ਪਰਾਮਰ੍ਸ਼ੇਰ ਜਨ੍ਯ ਖਸਡਾ
ਰਫ਼ਗਾਬੇਫ਼ਗ

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