

TURCAN CONNELL

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Information

The Housing (Scotland) Act 2006 (“the Act”) was passed by the Scottish Parliament in January 2006. The Act is being implemented gradually. It is already in force in respect of some matters such as adaptations for tenants with disabilities (Sections 52 and 53 of the Act).

Those parts of the Act which deal with **The Repairing Standard** and **The Private Rented Housing Panel** came into force on 3rd September 2007. All landlords of private residential property and agents who deal with the letting of residential property need to be aware of these provisions.

The Repairing Standard

All houses let for human habitation must comply with the Repairing Standard with few exceptions. The exceptions include:

- houses let under a Scottish Secure Tenancy or Short Scottish Secure Tenancy
- a house on land comprised in an agricultural tenancy under the Agricultural Holdings (Scotland) Act 1991, a Short Limited Duration Tenancy and/or a Limited Duration Tenancy **and** which is occupied by the tenant of that lease
- houses on crofts
- houses on land to which the Small Landholders (Scotland) Acts apply.

As the Repairing Standard applies to properties which are **let**, houses occupied by third parties under a licence to occupy where no rent passes and, accordingly, no tenancy is created, are not subject to the Repairing Standard. However, a house occupied by a person in terms of their employment is specifically included within the Repairing Standard duties.

The Repairing Standard is met if:-

- the house is wind and watertight and in all other respects reasonably fit for human habitation. In connection with determining this, regard is to be had to the extent (if any) to which the house, by reason of disrepair or sanitary defects, falls short of the provisions of any building regulations;
- the structure and exterior (including drains, gutters and external pipes) of the house are in a reasonable state of repair and in proper working order. When determining if the house meets this standard, regard is to be had to the age, character and prospective life of the house and the locality in which it is situated;
- the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order. Landlords should note that the reference to installations includes installations outwith the house which directly or indirectly serve the house and which the owner is responsible for maintaining (solely or in common with others) by virtue of ownership, any condition in their title or otherwise;
- any fixtures, fittings and appliances provided by the landlord are in a reasonable state of repair and in proper working order;
- any furnishings provided by the landlord are capable of being used safely for the purpose for which they are designed; and
- the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. In determining whether a house meets this standard in relation to warning for fire or suspected fire regard is to be had to building regulations and guidance issued by the Scottish Ministers. The statutory guidance which has been issued states that:-
 - (i) the landlord should ensure that smoke alarms are regularly maintained in accordance with manufacturer's instructions;
 - (ii) the number and position of alarms is to be determined by the size and layout of the house; normally there should be at least one smoke alarm on each floor;
 - (iii) if there is more than one alarm these should be interlinked;
 - (iv) smoke alarms installed from 3rd September 2007 onwards must be mains powered; this includes replacement alarms;
 - (v) existing alarms may be battery powered although it is best practice to have mains powered ones;
 - (vi) if any house has more stringent requirements (e.g. for a House in Multiple

- Occupation), the Repairing Standard will only be met regarding provision of smoke alarms if the more stringent criteria are met;
- (vii) alarms should be installed in accordance with the recommendations contained in the relevant British Standards on design of fire detection installations for dwellings;
 - (viii) landlords should be aware that fitting a mains wired smoke alarm may require building warrant.

The landlord's duty is to ensure that the house to be let meets the Repairing Standard at the commencement of the tenancy and at all times during the tenancy. In this regard, the landlord must inspect the house before the tenancy starts for the purpose of identifying any works which need to be carried out to ensure that the house to be let meets the Repairing Standard. The landlord must notify the tenant of any such work. A landlord must make good any damage caused by carrying out work required to ensure the house meets the Repairing Standard.

The landlord's duty to ensure the house meets the Repairing Standard throughout the tenancy only applies where the tenant notifies the landlord, or the landlord otherwise becomes aware, of work requiring to be carried out. The landlord must complete the work required within a reasonable time of being notified of it by the tenant or of otherwise becoming aware of the requirement for the work.

The landlord's duty to maintain and repair the house to the Repairing Standard does not extend to carrying out work which the tenant is required to carry out in terms of their tenancy (**but** note the qualification in the next paragraph) nor any work to be carried out for which the tenant is liable because of the tenant's duty to use the house in a proper manner. The landlord is not required to re-build or re-instate in the event of destruction or damage by fire, storm, floods or other "inevitable" (sic) accident. Nor will the landlord be required to carry out repair or maintenance of anything that the tenant is entitled to remove from the house.

The first exception referred to in the preceding paragraph (works which the tenant is required to carry out in terms of their tenancy) only applies if a tenancy is for a period of not less than three years and is not determinable at the option of either party within three years of the start of the lease.

There are rights to contract out of the Repairing Standard obligation but this can only be done by application to the Sheriff Court. A Sheriff may only grant an application for exclusion or modification of the Repairing Standard obligations if the tenant consents and, having regard to the terms of the tenancy and to all the circumstances, the Sheriff considers it is reasonable to do so.

Landlords should also be aware that they must on or before the start of the tenancy provide the tenant with written information about the effect of Part 1, Chapter 4 of the Housing (Scotland) Act 2006 – i.e. The Repairing Standard and the Private Rented Housing Panel. It is recommended that this is sent to the tenant contemporaneous with the offer of let

Private Rented Housing Panel

The Private Rented Housing Panel (“the Panel”) came into effect on Monday 3rd September 2007. It is the body to which a tenant may apply for a determination as to whether or not the landlord has failed in his duty to maintain the house so that it meets the Repairing Standard. The Act sets out the details of the powers of the Panel and Private Rented Housing Committees (“Committee”) and how applications are to be dealt with by them.

When an application is made to the Panel, it must decide whether to refer the application to a Committee or reject the application. An application can only be rejected if the President of the Panel considers it is vexatious or frivolous; if a tenant has previously made an identical or substantially similar application and a reasonable period of time has not elapsed between the applications; or the dispute to which the application relates has been resolved. A decision about whether to refer an application or reject it must be made within fourteen days of the Panel receiving the application (or, where the President considers that the decision cannot be made without further information or that there is a reasonable prospect of the dispute being resolved by the parties, by such later date as the President of the Panel considers reasonable). Where an application is rejected, notice of this must be given to the tenant and any person acting for the tenant where the President is aware of the name and address of such person. The notice must state the reason for the rejection and the tenant’s right to appeal.

Where an application is not rejected, it is referred to a Committee, which must decide whether or not a landlord has failed in his duty to meet the Repairing Standard. Where the Committee decides that the landlord has failed in his duty, it must make an Enforcement Order (“Order”) against the landlord requiring the landlord to carry out the work needed to bring the house up to the relevant standard and to re-instate any damage caused by such work. The Order will set out the period (not less than twenty-one days) within which the work must be carried out.

If a landlord fails to comply with the Order, the Committee must notify the Local Authority. In this situation, the Committee also have the power to make a Rent Relief Order (which can reduce the rent a tenant pays by up to 90%). Further, failure to comply with an Order without reasonable excuse is a criminal offence. The landlord is liable, on summary conviction, to a fine not exceeding Level 3 on the Standard Scale (currently £1,000).

The Committee cannot decide a landlord has failed in his duty if they are satisfied that he is unable to comply because of lack of necessary access or other rights but the landlord must have taken reasonable steps to acquire those rights.

Once the landlord has complied with the Order then it will be revoked. There is also provision for variation of the Order.

A Committee must vary an Order so as to extend, or further extend the period within which the work required by the Order is to be completed and in such other manner as it thinks fit where the Committee consider (on the submission of the landlord or otherwise) that the work required by the Order has not been, or will not be, completed during the period within which the Order requires the work to be completed and the Committee consider that

satisfactory progress has been made in carrying out the work, or they have received a written undertaking from the landlord stating that the work required will be completed by a later date which the Committee considers satisfactory.

A Committee can decide to revoke a Rent Relief Order at any time and must do so if the Order is revoked or a certificate is granted stating that the work required has been completed.

Where the Committee notifies the Local Authority that a landlord is unable to comply with his Repairing Standard duty or has failed or is unable to comply with an Order the Local Authority may carry out the work needed to bring the house concerned up to the Repairing Standard or the work required by the Order and any other work required to enable such work to be carried out. Before carrying out the work, however, the Local Authority must give twenty-one days notice of their intention to do so to the landlord and the tenant. The requirement for notice does not apply if the Local Authority considers the situation is urgent or if it is work which needs to be carried out to enable the Local Authority to carry out the initial work required and it is impractical to give notice. The Local Authority may recover any expenses it incurs in carrying out the work from the landlord including administrative expenses and interest.

Any Order, variation of it or certificate that the work has been completed is to be registered in the Land Register by the Committee. Where the Local Authority is entitled to recover expenses in respect of work carried out, it has powers to make a repayment charge in favour of itself specifying the amount repayable and the property concerned and charging the relevant property with the repayable amount. The repayment charge is then registered in the Land Register.

A landlord (or a tenant) aggrieved by decisions of the Committee may appeal to the Sheriff within twenty-one days of being notified of the decision. There are also certain rights of appeal against decisions by a Local Authority in connection with carrying out work, demanding expenses or refusing to grant a certificate that work has been completed. Such appeals must be made to the Sheriff within twenty-one days of the notice regarding work to be carried out, demand for expenses or decision to refuse to issue a certificate that work has been completed being served on the landlord.

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This note is intended as a brief summary of the Repairing Standard and Private Rented Housing Panel provisions of the Housing (Scotland) Act 2006. No responsibility can be accepted for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice. If you do not wish to receive further briefing notes and similar information from us please write to us at the address given above requesting that your name be deleted from our database.

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